

An Examination of How Youth Understand their Rights During the Criminal Process

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### Acknowledgments

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My graduate experience would not have been the same without the support and advice of my professors, friends and colleagues who graciously offered their friendship encouragement and advice to me. I cannot tell you how much I appreciate everything that you have done. A special thanks to Nathan Innocente whose expertise and insightful feedback was an asset in completing this thesis. I would also like to thank Matt for always believing in me, and for his patience and encouragement.

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## Abstract

In order for young people to meaningfully participate in the criminal justice system they must possess an understanding of their rights and legal procedures. To examine their understanding, 50 young people between the ages of 13-17 who received an extrajudicial sanction or were sentenced to probation, were recruited from the Finch Courthouse in Toronto, Ontario. Semi-structured interviews were conducted with participants regarding their understanding of their due process rights and their rights under the *United Nations Convention on the Rights of the Child*. Youth who indicated involvement in plea bargaining were also asked about their experiences during this procedure. In addition, the present study examined youths' perceptions of power differences in their interactions with criminal justice officials working within an institution that has tremendous control over offenders' lives. The results indicate that while youth seem to have some understanding of their rights and legal procedures, they nevertheless feel ill-equipped to invoke their rights in an adult-led criminal justice system. Furthermore, while past literature has often conceptualized youth understanding based on age (e.g., Crawford & Bull, 2006) the findings of the present study demonstrate that while age plays some role, the lack of power experienced by youth vis-à-vis adults, and specifically criminal justice professionals, has the most bearing on the inability of youth to exercise their rights.

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## Introduction

There has been an increase in concern about the legal rights of young people over the last several decades (Abramovitch, Higgins-Biss & Biss, 1993). Canada's current *Youth Criminal Justice Act* (herein referred to as the *YCJA*) constructs young people as 'rights-bearing citizens' and has been considered an improvement in protecting the rights of children (Denov, 2007). The emphasis on ensuring rights is evident in the Preamble to the *YCJA* which specifically refers to the *United Nations Convention on the Rights of the Child* (herein referred to as the *CRC*):

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms.

While young people are conceptualized as less rational and culpable than adults, they are also recognized as citizens who presumably understand their rights, and have the ability to recognize violations and invoke their rights when appropriate. Consequently, it is assumed that when youth enter the justice system that they are capable of making meaningful use of their rights. According to Abramovitch et al. (1993), the introduction of rights requires that "...children are aware that they possess these rights, know what they mean, and can understand and appreciate the context-specific issues surrounding the exercise of their rights" (p. 310).

As explained by Howe and Covell (2005), rights-based knowledge is critical because if rights are to have any effect, citizens need to know their rights. If citizens are not aware of their rights, they are not in a position to exercise them, or to ensure that their rights are properly implemented. While these points apply to all citizens, they are especially significant for young people and their advocates since youth are a social group



with relatively little power vis-à-vis a society in which institutions are led by adults (Tyyska, 2001). Yet if children and young people know their rights they are better able to ensure that their rights are protected, to speak up against violations, and to resist those who may violate their rights (Howe & Covell, 2005). For youth in conflict with the law, the significance of understanding legal rights and procedures is even more salient as research reveals that this population has higher rates of learning disabilities and mental health issues (Mears, 2001) which may inhibit their full understanding of the criminal justice process. Therefore, ensuring that all young people understand their legal rights and procedures is crucial.

Understanding among young people must be guaranteed during all legal procedures, including plea bargaining. This particular procedure is important to examine because approximately 90% of cases are resolved through plea bargaining (Verdun-Jones & Tijerino, 2004). Yet despite its prevalence in the administration of justice, no Canadian research exists on accused youth in plea resolutions (Bloomenfeld, 2005), and on the degree to which they understand their rights when involved in this procedure. Thus, the present study addressed how youth who received an extrajudicial sanction or were sentenced to probation understand their due process rights when involved in the criminal process, and specifically where plea bargaining has occurred.

Most studies that have examined youth understanding of legal procedures and rights have hypothesized that age is an influential factor. As a person's age increases, so too will his/her comprehension of legal procedures and rights. Similar to previous research (e.g., Crawford & Bull, 2006; Peterson-Badali & Abramovitch, 1992; Peterson-Badali, Abramovitch & Duda, 1997), the present study found that age played an important role in the understanding that youth had of some legal concepts and rights,

however, not consistently. Even though participants, on the whole, possessed some understanding of legal rights and procedures, the lack of power that they experienced vis-à-vis criminal justice officials appeared to have the most bearing on the inability of youth, across all age groups, to effectively exercise and understand their rights. The findings call attention to the fact that while having knowledge of rights is clearly important, it is not enough to ensure that youth will exercise their rights in an adult-led criminal justice system. Rather, in addition to knowledge, young people must feel comfortable exercising their rights, without fear of repercussions from legal professionals.

Overall the present study contributes to the literature by addressing rights found in the *CRC*, and by also examining how youth understand their rights during the process of plea bargaining. Furthermore, while past research has often constructed youth as understanding legal rights and procedures based on age (e.g., Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992), the present study considered how perceived relative power impacts on the inability of young people to understand and exercise their rights. Finally, whereas the voice of young people, and especially accused youth, is often ignored within research, the present study provided an opportunity for youth to discuss their experiences within the justice system and within the context of their rights.

### *Theoretical Framework*

The present study asks questions about youth, rights and the criminal process within the theoretical framework of social constructionism. This framework was selected as it relates to views and treatment surrounding youth offenders, as well as to the current understanding of youth as ‘rights-bearing citizens’ and as active participants in their own development (Denov, 2007).

While traditional scientific theories are concerned with establishing objective facts about children, social constructionism examines the alternative ways in which questions such as, ‘*What is a child?*’ and ‘*What is Childhood*’, can be answered (Woodhead & Montgomery, 2002). As explained by Burr (1995), there are a number of key features to understanding this theory. First, a social constructionist framework takes a critical stance towards ‘taken for granted’ knowledge and privileged traditions, such as positivism, which espouse narrow conceptualizations of the social world through specific and often static sets of categories. Next, social constructionism problematizes universalism/objectivity by considering history and culture when making sense of current experiences and issues. This perspective also recognizes that knowledge is sustained by social processes, and that meanings and ways of viewing people are shaped and produced through interactions with others. Finally, knowledge and social action are considered to be relational, so that responses depend on the manner in which issues are defined and understood (Burr, 1995).

Schwandt (2003) explains this framework in further detail by stating that human beings do not find or discover knowledge but, rather, they construct or produce it. Concepts, models and schemas are invented tools for making sense of experience, and constructions which emerge are constantly tested and altered as a consequence of new experience. Oftentimes, multiple and conflicting constructions exist, all of which have the potential to be meaningful. The question of which or whether a particular construction is considered true is based on socio-historical factors and consensus at a given time (Schwandt, 1994).

When considering at the study of ‘childhood,’ it is evident that this perspective has pronounced implications. James and Prout (1997) contend that the concept of

‘childhood’ should be understood as a social construction. They argue that rather than being a single universal phenomenon, a variety of childhoods exist, all of which are influenced by other variables such as class, gender, ability and ethnicity. Furthermore, children are not simply passive subjects, but rather active in the construction of their own lives, and the lives of those around them. As a result, the social relationships and cultures of children are deserving of study, independent of the control of adults.

Applying this particular framework to the present research interests was appropriate, particularly considering that varying constructions of ‘children’ and ‘childhood,’ have consequently impacted how young offenders have been treated within the criminal justice system. While views of children as ‘objects of parental authority’ and as ‘vulnerable’ and in ‘need of protection’ prevailed in the past, the view that young people are also citizens with inherent rights has become increasingly apparent since the implementation of the *YCJA* (Denov, 2007)

Adopting a social constructionist framework also assisted in understanding how young people construct their experiences within the justice system. Likewise, it facilitated an understanding of the multiple ways in which young people understand and construct themselves, and whether these ideas are consistent with how this population is commonly perceived and talked about by adults. Although the ‘problem’ of youth is often presented within the media along with negative and slanted stories of adolescents (Tyyska, 2001), the present study allowed youth to speak for themselves, and to discuss the significance of rights for them as young people, and as accused youth in the justice system.

### *Literature Review*

Created through the power of language, social constructions determine how children are talked about, understood and treated. However, rather than simply creating

one version of ‘childhood,’ various disciplines, professions, agencies and policy arenas formulate their own version of what this term refers to. In turn, the concept of the ‘child’ has great implications for policy, provision and practice (Moss & Petrie, 2002). Social constructions of ‘childhood’ have ranged historically from a focus on children as objects of parental authority, to children as vulnerable, to current attention to children as subjects with inherent rights.

### *History of Youth Justice and Constructions of Youth*

As constructions of children and young people have evolved, so too has the system which deals with these young persons (Denov, 2005). From colonial times until the 19<sup>th</sup> century, children in Canada were constructed as ‘possessions’ and ‘objects of parental authority,’ rather than being additionally viewed as ‘citizens,’ equivalent to adults, with fundamental rights. Although parents were required to provide their children with basic necessities, they were given the parental right of ‘reasonable chastisement,’ which allowed parents freedom to discipline. While it was an offence for parents to kill or maim their children, they were allowed to use harsh discipline, punishment and beatings (Covell & Howe, 2001). Therefore, rather than being perceived as citizens with inherent rights, children during this time (colonial times until the 19<sup>th</sup> century) were offered little protection and often became victims of abuse and neglect. Consequently, there existed no separate legal structure for juvenile offenders. For instance, children under the age of seven were considered *doli incapax*, or incapable of committing crime. While this same idea was applicable to children between seven and thirteen, a prosecution could take place for serious crimes. However, young offenders fourteen years of age or older were assumed to be rational and fully responsible for their crimes and therefore treated as adult offenders (Fetherston, 2005). As a result of these laws and practices, young people were

left vulnerable to various forms of abuse, neglect, exploitation and brutality (Denov, 2004).

From the time of Confederation to the mid-twentieth century children were constructed as a separate class of immature persons, both vulnerable and in need of state protection (Denov, 2005; 2007). Indeed, the role of the state in this more welfare-oriented era was to protect children from cruelty and abuse, and to intervene in cases where parents failed to provide protection. Although children during this time were no longer perceived as possessions, there was no prevailing discourse on the importance of guaranteeing their rights as children and, as such, they continued to be viewed as ‘objects’ requiring care from either their parents or the state (Denov, 2005; 2007). These changing assumptions consequently paved the way for a separate juvenile justice system and influenced the development of the *Juvenile Delinquents Act (JDA)* in 1908.

Based on this prevailing welfare oriented philosophy, the *JDA* emphasized the aid and protection of juvenile delinquents. This policy illustrated a new compassion towards youth, and emphasized the importance of assisting troubled youth through guidance and support, rather than through imprisonment (Winterdyck, 2005). According to Section 3(2) of the *JDA*: “Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision.” Likewise, section 38 of the *JDA* outlined that:

This Act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance (Section 38, *JDA*).

Furthermore, under the *JDA* there was no differentiation made between youth who offended, and those who were abandoned or neglected by parents. Consequently youth who did commit crimes were processed through the same court and placed in the same facilities, such as training schools, as young people who were in need of protection (Bala, 2003).

Challenges to the *JDA*'s welfare approach emerged after World War II as sentiments about youth shifted from children being viewed as objects of state protection to a view of children as 'subjects' and 'persons with dignity and rights.' In particular, with the creation of the Bill of Rights in 1960, the ability of the *JDA* to ensure due process rights for young offenders became a topic of debate and Canadians began to question the welfare and paternalistic principles of this policy. Although the *JDA* was a vast improvement over the harsh punishment to which children were subjected in the nineteenth century, it was often applied in an arbitrary fashion and resulted in indeterminate sentences. For instance, there is some evidence that while more serious young offenders from middle class homes were often permitted to return to their families, those from lower-class, Aboriginal or immigrant families, often served longer sentences in training schools for minor offences (Bala, 2003). Discrepancies became increasingly apparent after the enactment of the *Canadian Charter of Rights and Freedoms* in 1982. In particular, it became clear that the lack of legal rights for youth within the *JDA* were inconsistent with the protections outlined in the *Charter*. Consequently, these challenges with the implementation of the *JDA* led to the creation of the *Young Offenders Act (YOA)* in 1984.

According to Fetherston (2005), the *YOA* adopted a modified justice model to address criminal activity by young offenders. Specifically, although the *YOA* emphasized

youth accountability, it also acknowledged the special needs of young offenders, as well as their due process and constitutional rights. While the *JDA* referred to young offenders as ‘misdirected’ and ‘misguided,’ the Declaration of Principle of the *YOA* stated that: “young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance” (Section 3(c) *YOA*).

During the two decade time period in which the *YOA* was in place, a shift towards “law and order” began to occur and young people began to be constructed as ‘dangerous’ and as a ‘risk to society.’ In response to these perceptions, the *YOA* moved closer to a crime control model based on protecting society, punishing offenders, and providing offenders with fewer rights (Fetherston, 2005). Without appropriate guidance for interpreting the principles of the law, judges and police officers held public protection above rehabilitation or the need to address the root causes of youth crime (Campbell, Dufresne & MaClure, 2001; Doob and Beaulieu, 1992). The *YOA* offered little guidance for discretionary decision making by criminal justice actors charged with determining which principle, protection or rehabilitation, should be considered paramount, and as a result, the *YOA* was interpreted more punitively (Bala, 1994). Consequently, incarceration rates skyrocketed, earning for Canada the distinction of having the highest youth incarceration rate in the western world (Hylton, 1994; Leschied and Gendreau, 1994). During the 1990’s the courts were also increasingly handing out sentences of custody to youth for short periods, and the “short, sharp, shock” became popular with youth courts (Doob & Meen, 1993).



Yet Canadians remained dissatisfied with the *YOA*, stating that it was too lenient, and unable to control youth crime (Denov, 2004). A frequent criticism of the *YOA* was that rather than ensuring the safety of the public, it provided too much protection for the rights of young offenders. Societal pressure was therefore placed on the government to create a legal framework which emphasised accountability and responsibility, and made it clear that criminal behaviour would lead to meaningful consequences. In particular, amendments to the *YOA* such as transfer to adult court for violent and repeat offenders, increased use of restitution and community service work and increased flexibility in the publication of the names of young offenders were suggested (Hartnagel, 2004).

According to Hogeveen (2005), the considerable attention directed towards violent young offenders by the media and politicians in the 1990's contributed to punitive public responses. As a result of widely publicized and violent cases, such as the crimes committed against Reena Virk and Jonathan Wamback, political and public attitudes towards youth crime became increasingly harsh. For example, during the 1999 Ontario election campaign, former Conservative premiere Mike Harris argued for lowering the age at which a youth could be sentenced to adult court, and stated that the *YOA* was too lenient and needed to be "toughened up" (Bala, 2003). A further consequence of the attention geared towards youth violence was that politicians and citizens began to believe that this population was becoming more violent and that youth crime was spiralling out of control.

Several amendments to the *YOA* were implemented throughout the 1990's, such as increasing the maximum sentence for murder from three to five years in 1992, and then increasing it again to ten years in 1995 (Hartnagel, 2004). Despite these alterations Canadians remained unsatisfied with this justice system, and felt that it was still too

lenient and unable to control youth crime. Further criticisms and scrutiny also emerged as a result of the growing disjuncture between the children's rights movement and the Canadian juvenile justice system. This divide became increasingly apparent with the ratification of the *CRC* in 1991, due to the fact that the *YOA* directly violated a number of the protections outlined in the *CRC*. Article 37 of the *CRC* states that children should be detained only as a last resort, yet the *YOA* placed emphasis on "supervision, discipline and control" (Denov, 2004, p.5). As a result of these criticisms and increased public and political pressure to "get tough" and effective on youth crime, the *YOA* was replaced with the *YCJA* (Denov, 2004, p.1).

#### *Youth Criminal Justice Act*

Introduced on April 1, 2003 by then Justice Minister Anne McLellan, the *YCJA* has been considered to be an improvement over the *YOA* in providing a fairer and more effective youth justice system (Denov, 2004). While the *YOA* was criticized for lacking a clear and coherent youth justice policy, the *YCJA* contains both a preamble as well as a Declaration of Principle which outlines the objectives of the youth justice system (Fetherston, 2005). Like the *YOA*, under this current system, youth are constructed as 'rights-bearing citizens' who nevertheless lack the maturity of adults, and are therefore in a state of 'diminished responsibility.' In response to shortcomings of the *YOA*, the *YCJA* emphasizes holding youth accountable through interventions which are proportionate to the seriousness of the offence which they committed (Hartnagel, 2004). Moreover, as stated in the Declaration of Principle the *YCJA* is intended to:

- 1) Prevent crime by addressing the circumstances underlying a young persons offending behaviour; 2) Rehabilitate young persons who commit offences and reintegrate them into society, and 3) Ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public (Section 3 (I)(a)(i-iii) *YCJA*).

In comparison to previous legislation, a greater number of sentencing options exist under the *YCJA*. Specifically, judges may select from sentences such as: a reprimand, absolute discharge, conditional discharge, paying a fine up to \$1000, monetary restitution to a victim, restitution of property to a victim, performance of personal service for a victim, up to 240 hours of community service, custody and community supervision for up to two years and up to three years for some more serious offences, with the last third served in the community, deferred custody and probation for up to two years. Out of the available options, probation is the most common sentence (Fetherston, 2005). Since the implementation of the *YCJA*, probation has been imposed in serious offences and on chronic offenders (Olivo, Cotter & Brownwich, 2007). This sanction often requires a young person to regularly meet with their probation officer, to ‘keep the peace’ and be of good behaviour and to follow conditions such as attending school (Fetherston, 2005, pg. 102).

According to Schulenberg (2006), one of the most significant changes apparent in the *YCJA* concerns the use of extrajudicial measures and diversion to extrajudicial sanctions. Under the *YCJA* these options must be considered by police officers before laying a charge for non-violent offences, regardless of previous police contact or convictions (Schulenberg, 2006). The use of extrajudicial measures including: doing nothing, warnings, cautions, referrals and extra-judicial sanctions does not require any finding of guilt. According to the Declaration of Principles, extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour. Provided that the use of extrajudicial measures is consistent with the principles outlined in Section 4, nothing in the *YCJA* precludes their use in respect of a young

person who 1) has previously been dealt with by the use of an extrajudicial measure, or 2) has previously been found guilty of an offence (Section 4(d)(i-ii)).

A more onerous type of extrajudicial measure is known as an extrajudicial sanction. As stated in Section 10(1) of the *YCJA*, an extrajudicial sanction may be used to deal with a young person alleged to have committed an offence, only if the young person cannot be adequately dealt with by a warning, caution or referral. In order for a young person to receive an extrajudicial sanction, the *YCJA* outlines conditions which must be met including:

a) it is part of a program of sanctions that be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province; b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society; c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it; d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel; e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed; (f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and (g) the prosecution of the offence is not in any way barred at law (Section 10 (2) (a-g)).

An extrajudicial sanction is used on a post-charge basis. In Ontario, a charge is usually laid first, and the police may make recommendations to the Crown if they believe that it may be appropriate to use a sanction (or the Crown may independently make this decision). It is necessary that the young person consent to the extrajudicial sanction (Section 10(2)(e)), and if it is completed, their charges are withdrawn. In contrast, a young person who is sentenced to probation will have been found guilty of the offence. A young person who receives an extrajudicial sanction may be required to complete a program such as victim-offender reconciliation or a community service program, where

he/she is asked to perform personal or community service, make an apology or make reparations (Olivo et al., 2007).

Through the use of extrajudicial measures, including sanctions, the *YCJA* attempts to divert youth who commit minor offences away from the justice system. In doing so consequences are logically linked to crime and creative, cost-effective ways for dealing with youth offending are meant to be achieved. Likewise, when it comes to sentencing youth, the *YCJA* has also placed limits on the use of custody (Olivo et al., 2007), such as requiring that a young person be convicted of a violent offence in order to be sentenced to custody (Section 39(1)(a)). Even when youth are sentenced to custody, Section 42(2)(n) of the *YCJA* provides for a combined custody and supervision order, allowing for reintegration into the community. This is important as one objective of the *YCJA* is to “rehabilitate young persons who commit offences and reintegrate them into society” (Section 3(1)(a)(ii)).

A study by Doob and Sprott discovered that fewer young offenders have been found guilty of violent crimes and sentenced to custody since the implementation of the *YCJA* (in “Youth Jail Terms,” 2006). The study, which compared the last five years of the *YOA* (1998-2003) with the first year of the *YCJA*, revealed that rates for both minor assaults and all other violent charges dropped dramatically. A further amendment to the *YCJA*, which may further reduce the number of youth in penitentiaries, became evident in a Supreme Court of Canada ruling made on May 16, 2008. Specifically, while it was previously the responsibility of young offenders to prove why they should not be punished as adults for serious crimes, the court ruled that placing this onus on youth is unconstitutional. As a result, it is now the Crown who must prove that a youth convicted

of a serious violent offence ought to be sentenced as an adult (“Crown Must Justify,” 2008).

Yet it is important to note that not all statistics have been positive. In particular, the number of Aboriginal youth admitted to sentenced custody increased between 2002-2003 and 2003-2004 from 22% to 28% for males, and from 28% to 35% for females, of the total number of youth sentenced to custody. Considering that Aboriginal youth make up only 5% of the total youth population in Canada, these numbers are disproportionately high. Furthermore, despite the improvements brought about by the *YCJA*, Canada continues to have a higher rate of detention than most other developed nations (Standing Senate Committee on Human Rights, 2007). Consequently, some evidence illustrates that Canada is in violation of its obligations under the *CRC*.

*The United Nations Convention on the Rights of the Child*

Signed and ratified by Canada in 1991, the *CRC* is the most widely ratified human rights treaty in history (Denov, 2005). This piece of legislation acknowledges the existence of rights for all young people, constructing them as citizens with a range of social, political and civil rights (Stasiulis, 2002). For instance, under the *CRC*, young people in conflict with the law have specific rights to which they are entitled, such as the freedom to exercise choices, ask questions, challenge procedures, and have the opportunity to voice their own opinions in criminal proceedings (Denov, 2005). Article 37 outlines protections for accused youth such as the right not to be subjected to cruel and unusual punishment, and the right to have prompt access to legal assistance. Likewise, Article 40 outlines protections such as the right to be promptly informed of charges, and the right not to be compelled to provide testimony.

By examining the history of the Canadian youth justice system, the increased emphasis placed on the legal rights of young people over the past several decades becomes evident (Abramovitch et al., 1993). Consequently, it has become recognized that when young people become involved in the justice system it is essential that they not only possess knowledge of their rights, but also that they are capable of making meaningful use of them. This requires young people to be aware that they have rights, know what they mean, and understand how to exercise them. As an illustration, meaningful use of the right to legal counsel requires that young people understand not only that this right exists and that they can request a lawyer, but also that they understand why they might want a lawyer present (Abramovitch et al., 1993). It is therefore imperative that young people be educated about the consequences of waiving and/or exercising rights in order to appreciate their function and significance (Peterson-Badali, 1996).

Although the *YCJA* is generally consistent with the *CRC* (i.e., ensuring a variety of dispositions for youth aside from custody) and the Canadian government even considers the *YCJA* to be an improvement in protecting the rights and best interests of children, there are nevertheless some areas of violation. For example, while Article 16 of the *CRC* states that all children have a right to privacy, the *YCJA* permits the publication of the names of youth who receive an adult sentence for presumptive offences (Denov, 2004, 2007). The inability of the *YCJA* to completely comply with the *CRC* produces concern over whether the Canadian government can effectively implement children's rights.

Furthermore, despite Canada's commitment to ensure that the principles and provisions of the *Convention* are widely known (Article 42), studies reveal that a large majority of young people lack knowledge of the *CRC* (Howe & Covell, 2005; Mitchell

2005; Standing Senate Committee on Human Rights, 2007). This lack of knowledge exists despite the obvious fact that if children have basic rights, they should be able to know and exercise them. After all, if citizens are not aware of their rights, they are not in a position to exercise them, or to ensure that their rights are properly implemented.

Additional findings regarding the *CRC* in Canada are further revealed in reports produced by The Standing Senate Committee on Human Rights. In November 2004, the Committee embarked on a study titled: *Who's in Charge Here? Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, in order to examine Canada's international obligations in regards to the rights and freedoms of children (Standing Senate Committee on Human Rights, 2005). In addition to a general lack of knowledge, the Committee noted a lack of awareness among members of the government and the general public about the *CRC*, and the rights outlined within it. The Committee was also made aware of numerous concerns regarding the circumstances of children across Canada, such as medically fragile children, children with disabilities, Aboriginal children, migrant children, sexually exploited children, and those involved in welfare or youth justice systems.

Despite playing an instrumental role in the drafting and promotion of the *CRC*, and being regarded as a leader in human rights (Standing Senate Committee on Human Rights, 2005), numerous *CRC* violations nevertheless occur within Canada. Yet if the *YCJA* constructs young people as individuals with distinct human rights, information regarding their fundamental rights must be provided. However, even before young people can effectively express their views and assert their rights within the legal context, they must first be fully informed of the legal processes which impact them (Justice for Children and Youth, 2005). Thus, a number of studies have examined youths' legal



knowledge as well as their understanding of their rights in general, and their rights within the legal context. These studies have conceptualized youth knowledge and understanding primarily through developmental capabilities in hypothetical scenario vignettes (e.g., Peterson-Badali & Abramovitch, 1992; Peterson-Badali & Abramovitch, 1993; Peterson-Badali et al., 1997), interviews (e.g., Peterson-Badali, Abramovitch, Koegl & Ruck, 1999; Peterson-Badali & Koegl, 1998), questionnaires (e.g., Crawford & Bull, 2006; Peterson-Badali & Koegl, 1998) and through standardized measures and tests (e.g., Grisso, Steinberg, Woolard, Cauffman, Scott, Graham, Lexcen, Reppucci, & Schwartz, 2003; Viljoen, Klaver & Roesch, 2005).

### *Youth Understanding*

Past research has examined youths' legal knowledge as well as their understanding of rights in general, and their legal rights. These studies have examined how factors such as cognitive ability (e.g., Viljoen et al., 2005), socioeconomic status (e.g., Melton, 1980; Viljoen et al., 2005), race (e.g., Viljoen et al., 2005), and prior experience in the justice system (e.g., Schnyder Pierce & Brodsky, 2002), influence understanding. Yet the role of age has received considerable attention, with young people generally being constructed as having the ability to understand rights and legal procedures and to make decisions based on age (e.g., Grisso et al., 2003; Melton, 1980; Peterson-Badali & Abramovitch, 1992). Overall, while some studies have found that youth understanding increases with age, others have found the role of age to be inconsistent.

The focus on age can be attributed to the fact that within the North American justice system there is an assumption that young people are in fact capable of exercising their due process rights in a self-protecting manner (Peterson-Badali & Abramovitch, 1993). Considering that youth between the ages of 12-17 are included under the *YCJA*, it

is important to examine whether they possess the developmental capabilities to participate in legal proceedings.

### *Youths' Legal Knowledge*

Studies have found that young people's understanding of legal issues is variable across concepts and that many youth lack complete information about their legal rights and reveal misconceptions about aspects of the justice system (e.g., Abramovitch et al., 1993; Peterson-Badali et al., 1997). Yet it has also been recognized that there may be developmental differences in legal judgements and decisions (e.g., Crawford & Bull, 2006; Viljoen et al., 2005) and studies have found that while age does not always play a consistent role (e.g., Crawford & Bull, 2006; Peterson-Badali et al., 1997; Peterson-Badali & Abramovitch, 1992), there is a general trend towards greater "legal sophistication" as age increases (Peterson-Badali & Abramovitch, 1992, p. 156).

A study by Grisso et al. (2003) assessed the ability of youth to stand trial. Participants completed a standardized measure of abilities relevant for competence to stand trial, as well as a procedure for assessing psychological influences on legal decisions often which is required of defendants. The findings indicated that in comparison to older adolescents, juveniles aged 15 and younger are significantly more likely to be impaired in ways that compromise their capacity to serve as competent defendants in criminal proceedings. Furthermore, adolescents were more likely than young adults to make choices that reflect compliance with authority figures, and younger adolescents were found to be less likely, or less able to acknowledge the risks and consequences of their legal decisions.

In contrast to the findings by Grisso et al. (2003), studies have found that age does not necessarily play a consistent role in determining youth understanding. Peterson-

Badali & Koegl (1998) compared the knowledge that students and young offenders possess of the *YOA*, and discovered age differences with respect to many, but not all of the issues addressed. Likewise, A U.S. study by Viljoen et al. (2005) examined the legal judgements of youth defendants. Participants completed tests designed to assess the relationship between legal decisions and age, cognitive development, psychopathology, legal abilities and situational factors. The results indicated important developmental differences in legal decision making. For example, adolescents under the age of 15 were more likely to confess and waive their right to counsel. Furthermore, while those aged 15-17 were more likely to confess, plead guilty and accept a plea bargain if they believed that there was substantial evidence against them, the decisions of younger participants were not influenced by the strength of evidence.

Similar findings were discovered by Crawford & Bull (2006), who note that while age is an important factor that affects knowledge and understanding of the court, there are wide variations within age groups. Specifically, this study examined the understanding and misunderstanding that older children (between 12 and 15 years) possess of key legal terminology. After being asked to complete a questionnaire, participant results revealed that age produced the strongest effect on the ability of young people to recognize and describe legal words. However, age did not play a consistent role, with older children experiencing difficulty with some of the terms. These findings are important to consider as many lawyers believe that when a child enters adolescence they no longer require special language in order to enhance understanding. As a result, older children may have difficulties which are not being addressed within the justice system, especially since they are less likely to admit to misunderstanding, compared to younger children.

Studies which have noted the inconsistent role of age have also used interviews containing hypothetical vignettes to conceptualize youths' legal knowledge. Peterson-Badali & Abramovitch (1992) concluded that while increases in age result in a general trend towards greater "legal sophistication," knowledge also varies across legal concepts. Furthermore, the authors note that while participant responses generally improved with age (i.e., understanding of lawyer-client confidentiality) misconceptions also increased with age (i.e., meaning of the not guilty plea). Peterson-Badali et al. (1997) examined age-related changes in children's knowledge and reasoning about legal issues and discovered that despite young people possessing basic knowledge, many were uncertain about fundamental components of the justice system. Yet this finding did not only apply to younger children. In fact, older children were more likely to show confusion surrounding the meaning of a not guilty plea. Moreover, even while older subjects revealed greater legal sophistication on reasoning measures, they were similar to young participants in terms of possessing poor knowledge of legal concepts.

Similarly, Peterson-Badali & Abramovitch (1993) examined the ability of young people to reason about legal issues involved in a plea decision. Contrary to prediction, it was discovered that even children as young as 10 years relied on legal (i.e., evidence), rather than moral criteria when engaging in plea decisions. However, despite the competency of even the youngest participants, this study did reveal grade-related changes. For example, although younger youth seemed to understand that evidence and consequences are important factors in plea decisions, they were unable to clearly articulate the roles of these variables in the decision making process.

The reviewed studies have examined the role of age, with a concentration on whether knowledge and understanding increase with age. Overall, while these studies

demonstrate that age does not necessarily play a consistent role in youths' legal knowledge and that misconceptions may increase with age (e.g., Peterson-Badali & Abramovitch, 1992; Peterson-Badali et al., 1997), older youth generally reveal greater knowledge and understanding than their younger peers (e.g., Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992).

While it is clearly important to examine the degree of knowledge that young people have of the justice system, literature has additionally looked at the understanding that this population has of their rights, both generally, and within the legal context. As stated by Peterson-Badali, Morine, Ruck & Slonim (2004), this issue is important to examine as:

The consequences of failing to examine how children and adolescents think about children's rights issues are potentially serious, as simply extending rights on paper, without ensuring that young people possess sufficient awareness and understanding to effectively use them, means that rights may fall short of their protective goal" (p. 160).

#### *Youths' Understanding of Rights in General*

Similar to the literature on youths' legal knowledge, research surrounding youths' understanding of their rights in general reveals that age plays an important role. Melton (1980) examined the concept that children have of rights through interviews containing hypothetical vignettes. It was discovered that older children tended to develop less egocentric views of rights in which they understood rights as being based more on fairness and competence to exercise self-determination, than on what authority figures allow children to do. Specifically, children progress towards more mature views of rights, in which they acknowledge that rights cannot be revoked by powerful people.

Ruck, Keating, Abramovitch & Koegl (1998) examined how knowledge of rights develops from childhood to adolescence. Participants were asked interview questions and

presented with hypothetical vignettes in order to assess their knowledge of rights and the importance that they attributed to rights both generally and in children's and adolescent's lives. Contrary to the findings by Melton (1980), an age-related progression in the knowledge that children and adolescents possess about rights was not found. As expected by the authors, it was concluded that a global stage account (age-related progression), may not fully consider the development of rights knowledge in young people, and that thoughts about rights are related to how a young person views rights within their own life. Thus, although age was considered in this study, it was not found to play a consistent role in how youth understand their rights.

The authors argue that as a result of the limited understanding that young people possess generally about their rights, they may experience difficulty when it comes to reasoning and effectively exercising their rights in real-world situations (Ruck et al., 1998). For example, the lack of rights-based knowledge present in young people is particularly notable within the context of the legal system. To illustrate, a study by Dufresne, Maclure & Campbell (as cited in Denov, 2004) concluded that a young person's understanding of his/her legal rights and procedures may be more of an illusion than a reality. For example, many young people in the study indicated that they fail to meet their lawyers until the day of trial, and were even encouraged to plead guilty to accelerate the court process, without being informed of the implications.

#### *Youths' Understanding of Legal Rights*

The previously reviewed literature has demonstrated that age plays an important role in youths' legal knowledge as well as in their understating of rights in general. A similar finding also emerges in studies examining the understanding that youth have of their legal rights. Abramovitch et al. (1993) examined the tendency of young people to

waive their rights, as well as their understanding of both their rights and the implications of giving them up. Interviews were conducted with students where they were read the cautions and warnings used by the police, presented with a waiver form, and asked a set of questions. Although the overall trend expected was for students in higher grades to demonstrate better comprehension, this was not the case for all measures. For example, while there were not significant age differences in the decision to sign or not sign the waiver, older students were more likely to know that questioning would follow the waiver form, in comparison to younger students.

Similar findings were discovered by Abramovitch, Peterson-Badali and Rohan (1995) who examined the factors affecting the assertion of the rights to silence and legal counsel. After presenting young people with hypothetical vignettes, it was found that understanding of these rights varied significantly with grade. Although a substantial number of youth over the age of 16 had the ability to successfully paraphrase their rights to silence and legal counsel, only a third of the younger participants were able to do so. However, while the decision to assert the right to silence was grade related, the assertion of the right to counsel was not.

While the following two studies focused on legal rights, they did not specifically focus on age. Nevertheless the findings of these studies have important implications in terms of looking at the power imbalance that exists between accused youth and criminal justice officials. Peterson-Badali et al. (1999) examined self-reported factors that influence the legal decisions of young people regarding their right to silence and legal counsel. Interviews were conducted which focused on the young persons' experience at the police station as well as their understanding of the defence counsel. The results illustrated that due process rights for young people may not be working effectively.

Furthermore, it was concluded that while rights knowledge is essential, it may not be enough to ensure that young people make the correct choices. In particular, additional barriers such as a lack of knowledge of how to exercise rights, coercive aspects of arrest and police intimidation impeded the ability of young people to utilize their rights (Peterson-Badali et al., 1999).

An important right guaranteed to every adult and young person is the right to legal counsel. Peterson-Badali, Care and Broeking (2007) interviewed young offenders about their experiences with defence lawyers to examine the factors associated with young people's perceptions and evaluations of lawyers and the lawyer-client exchange. It was concluded that ratings of participation, objectivity, trustworthiness, and treatment with dignity and respect are related to the satisfaction that young people had with their lawyer. Although this study found that age was not a statistically significant predictor of youths' satisfaction with their lawyers, it is nevertheless important to examine the experiences that youth generally have with their lawyers. Considering the power imbalance that exists between adolescents and adults, young people may feel dependant on their lawyers to not only achieve positive outcomes, but to also offer a sense of trust. This study as well as the Peterson-Badali et al. (1999) study foreshadows the need to examine the perceived role of power in interactions between youth and criminal justice officials.

The literature exploring youths' understanding of legal knowledge, rights in general, as well as legal rights demonstrates that young people are generally constructed as having the ability to understand rights and legal procedures and to make decisions based on age (e.g., Grisso et al., 2003; Melton, 1980; Peterson-Badali & Abramovitch, 1992). Despite the fact that age does not always play a consistent role in the understanding that young people have, and that misconceptions may actually increase



with age (e.g., Crawford & Bull, 2006; Peterson-Badali & Abramovitch, 1992; Peterson-Badali et al., 1997), there is a basic assumption that older youth will possess enhanced sophistication in knowledge of legal rights and procedures (e.g., Abramovitch et al., 1995; Peterson-Badali & Abramovitch, 1992).

The present study builds upon previous research by exploring the role of age, assuming that across some concepts older youth may be more knowledgeable. However, the present study additionally considered how perceived relative power impacts on the ability of young people to understand and exercise their rights. Examining the issue of power was important considering findings by Peterson-Badali et al. (1999) and Peterson-Badali et al. (2007), who note that the element of power may influence the experiences of accused youth within the justice system. Thus, the present study examined not only the understanding that youth have of legal processes and rights, but also how their relationships vis-à-vis adult justice professionals impact their experiences within the justice system. While the present study explored youth understanding throughout the criminal process, a specific focus was placed on the process of plea bargaining.

### *Plea Bargaining*

It is essential that the rights of youth be guaranteed during all legal procedures, including plea bargaining. While it is commonly assumed that most cases are adjudicated through a trial, approximately 90% of cases are in fact, resolved through plea bargaining (Verdun-Jones & Tijerino, 2004). Further, as stated by Peterson-Badali and Abramovitch (1993), “The choice regarding plea is arguably one of the most important decisions required of young people in their interactions with the legal system, as the potential outcome of such a choice has serious and far reaching consequences” (p.539).

Additionally, the outcome of a plea negotiation may have an impact on the degree to

which the Crown and defence counsel “shape the facts” that are ultimately presented to the judge during sentencing (Verdun-Jones & Tijerino, 2004, p. 473).

According to the *Law Reform Commission of Canada* (as cited in Verdun-Jones & Tijerino, 2000), a “plea agreement” constitutes “an agreement by the accused to plead guilty in return for the prosecutor’s agreeing to take or refrain from taking a particular course of action” (p.3-1). A plea bargain is generally the result of informal dialogue between the Crown prosecutor and the lawyer representing the accused regarding the resolution of a case (Bala, 2003). During plea bargaining, promises made by the Crown counsel may fall into three categories including: 1) promises relating to the nature of the charge (charge bargaining); 2) promises relating to the sentence (sentence bargaining); and 3) promises relating to the facts that the Crown may present to the trial judge (fact bargaining). Despite the common occurrence of plea bargaining, the practice remains controversial, and has been subject to a number of criticisms. According to Piccinato (2004), the practice of plea bargaining has been criticized for undermining the values of the justice system, such as those entrenched in the *Canadian Charter of Rights and Freedoms*. Moreover, it has been considered to be an irrational, unfair and secretive practice which offers offenders lenient sentences and sends the message that the law can be broken, provided that an offender is willing to bargain. A further concern is the fact that an accused individual, who is innocent, will be encouraged to plead guilty. Despite these factors, a plea of guilty can spare victims the experience of testifying, and can also allow for a significant number of cases to be resolved without the need for timely trials. Additionally, while a trial leaves open the possibility of a complete acquittal, plea bargaining provides the guarantee that guilt will be concluded on at least some of the charges. For the accused individual, plea bargaining allows for a better indication of the

outcome, and possibly a less severe sentence than would have occurred with a trial (Bala, 2003).

Interestingly, while criminal justice personnel were not always willing to admit to the existence of plea bargaining, this legal procedure is now recognized as playing a vital role in the administration of justice. Although the Supreme Court of Canada recognizes plea bargaining as an important element in the exercise of prosecutorial discretion (Verdun-Jones & Tijerino, 2004), no research in Canada has been conducted on accused youth in plea bargaining (Bloomenfeld, 2005), and on the degree to which they experience their rights when they become involved in plea resolution practices.

### *Research Questions*

The research questions were formulated in response to gaps existing within the literature. In particular, while past studies have focused on the understanding that young people have of legal knowledge (e.g., Peterson-Badali et al., 1997), as well as protections such as the right to silence (e.g., Abramovitch & Peterson-Badali, 1995), the present study extended the literature by addressing rights articulated in the *CRC*. Furthermore, the present study examined how youth understand their rights during the process of plea bargaining, an area neglected in the literature (Bloomenfeld, 2005). Finally, past research has primarily constructed youth as understanding legal rights and procedures based predominantly on psychological development (e.g., Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992). While age is clearly important to examine, there is a broader conception required of youth as a social group who lack power vis-à-vis adults. Therefore, the present study also considered how perceived relative power impacts on the ability of young people to understand and exercise their rights. Thus, the present study addressed two research questions: 1) *How do youth who have been charged or found*

*guilty of a criminal offence understand their due process rights, and their rights where plea bargaining has occurred?* and; 2) *Are there power differences experienced by young people based upon their age?* As a result of past research which has found that age does play a role in understanding of legal rights and procedures among young people (e.g., Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992; Peterson-Badali et al., 1997), it was expected that older youth (16-17 years) would generally demonstrate enhanced knowledge in comparison to their younger peers (13-15 years). Yet given that youth are often socially constructed as a social group who lack power vis-à-vis adults (Tyyska, 2001) it was also expected that this lack of power would influence the ability of young people of all ages to effectively exercise their rights.

## Method

### *Methodology*

The prevalence of qualitative methods has increased within the social sciences. These techniques advocate a human-centered approach and are most interested in how people view and understand the world. Researchers who employ qualitative methods are required to understand the interpretations and meanings that individuals attribute to their actions and to other objects, and people that they encounter in the world (Government of Canada, 2006). In addition, by employing this approach, researchers attempt to answer questions by investigating social settings and the individuals who inhabit these settings (Berg, 2004). Knowledge is considered to be socially constructed at both an individual and cultural level. Therefore, to a degree, all knowledge is thought to be interpretive and dependant on social context, as well as shaped by the values of the subject and researcher (Government of Canada, 2006).

The use of qualitative methodology was quite appropriate for this study. Many existing studies within this area are quantitative in nature (e.g., Crawford & Bull, 2006; Grisso et al., 2003; Viljoen et al., 2005), and have used questionnaires (e.g., Crawford & Bull, 2006), structured interviews (e.g., Peterson-Badali & Abramovitch, 1992), and/or hypothetical vignettes (e.g., Peterson-Badali et. al., 1997) to obtain data. Quantitative methodologies have been valuable in showing that while age plays an important role in the understanding that youth have of legal rights and procedures, it does not necessarily play a consistent role (e.g., Crawford & Bull, 2006; Peterson-Badali et al., 1997; Peterson-Badali & Abramovitch, 1992). Finally, while participant samples in previous studies have often included young people with no prior criminal involvement (e.g.,

Crawford & Bull, 2006; Peterson-Badal & Abramovitch, 1992), the experiences of youth directly involved in the justice system have often been ignored.

In the present study, the use of qualitative methods contributes to the literature within this field by providing an avenue for young people involved in the justice system to share their attitudes and experiences. Providing this opportunity for young people is important. In a study by Peterson-Badali, Ruck & Koegl (2001), young offenders were interviewed on their perceptions of their juvenile court sentences and on their views regarding the effectiveness of their disposition. Through the interviews, insight was offered into the meanings that sentences have for young people and on the perceived connection between their sentence and offending behaviour. It was noted by the authors that the perspectives and experiences of young offenders can provide valuable information. Likewise, in a study by Sparks, Girling & Smith (2000), even children as young as nine were provided with an opportunity to voice their perspectives on justice and punishment. Again, this illustrates the importance of including the voices of youth, particularly because they are young and their voices often not considered legitimate.

According to Taylor and Bogdan (1998), qualitative researchers consider all perspectives to be worthy of study, and a goal of this type of research is to examine how things look from a different point of view. The perspective of a student is considered to be as important as the teacher's, the homemaker's perspective as important as the breadwinner's, and the juvenile's perspective as important as the judge's. This characteristic of qualitative research was especially applicable to the present study as it provided a voice to a group of young people who have engaged in crime and are typically ignored. While criminal justice officials could have alternatively been interviewed on how they believe guilty youth understand their rights, and how power influences the

ability of youth to exercise their rights, interviewing the youth themselves provided an enhanced method for answering the research questions. Additionally speaking to youth after being processed through the criminal justice system offers the most direct perspective.

Many qualitative researchers use grounded theory (Glaser & Strauss, 1967) to analyze their data and develop thematic categories, and therefore a similar approach was used in the present study for analyzing the data. However, while classical grounded theorists argue for some expression of theoretical development to take place (Glaser and Strauss, 1967; Strauss and Corbin, 1998), this is not the sole purpose of grounded theory. It should be noted that for the purposes of the present study, grounded theory coding procedures were used, as opposed to a grounded theory methodology. Specifically, a two-staged process of open and axial coding described by Strauss and Corbin (1998), among many others, was utilized as analytical tools in order to solely elicit and clarify themes.

Although the present study is predominately qualitative in nature, the use of quantitative methods was additionally employed. While the goal was not to make statistical conclusions about a population, the use of quantitative methods facilitated an examination of the global responses to different questions. Specifically, although this study allowed the voices of offenders to be heard qualitatively, comparing responses quantitatively in terms of percentages provided further insight into responses. For example, if results indicated that a high percentage of youth knew how to define a right, this number could be compared to the percentage of youth who believed that their rights could be taken away and whether there was a relationship between the two. By combining methods a more complete examination of how youth understand their legal rights and

procedures, and the role that power relations play in the ability of youth to exercise their rights was achieved.

### *Characteristics of Participants*

Participants consisted of a convenience sample of 50 youth who received either probation or an extrajudicial sanction. According to Berg (2004), the use of a convenience sample allows the researcher to rely on subjects who are close at hand, or easily accessible. A sample size of 50 was selected as it is a manageable number, given the challenges of gaining access to and speaking to this specific population. In total, 35 males and 15 females were interviewed. All participants were between the ages of 13-17 ( $M=16.08$ ),<sup>1</sup> and therefore fell under the jurisdiction of the *YCJA* (Refer to Table 1 for a breakdown of participant numbers by age). Young people who were sentenced to custody immediately after disposition of their case were not eligible to participate because of the difficulty in accessing this population for research purposes.

Table 1

### *Number of Participants by Age*

<i>Age</i>	<i>N=50</i>
13	2.0% (1)
14	6.0% (3)
15	20.0% (10)
16	26.0% (13)
17	34.0% (23)
<i>Mean age</i>	16.08

<sup>1</sup> While youth between the ages of 12-17 inclusive were eligible to participate there were no 12 year olds included in the sample.



Considering that this study placed a focus on the understanding of rights during plea bargaining there was a concern that a limited number of young people may actually have been involved in this procedure or may not have understood fully that they did, in fact, participate in a plea resolution. Thus, for the purposes of this study, all young people who received an extrajudicial sanction or were sentenced to probation were permitted to participate in the interview regardless of whether or not they indicated involvement in plea bargaining. In total, 44% (n=22) of participants reported that they did plea bargain.<sup>2</sup> Finally, there were 50 cases (50 participants), making up a total of 90 charges.

Forty percent (n=20) of participants received an extrajudicial sanction, and 60% (n= 30) were sentenced to probation. Almost half (48%; n=24) of the youth were first-time offenders. The remainder reported having some prior experience with the criminal justice system. Of the 30 who received probation, 33% were first time offenders (n=10),<sup>3</sup> 16% were second time offenders (n=5), 23% were third time offenders (n=7), 3% were fourth time offenders (n=1), and 23% (n=7) reported that they had committed multiple offences in the past, however, were unsure of the exact number. Of the 20 who received an extrajudicial sanction, 70% were first time offenders (n=14), 15% were second time offenders (n=3), 5% were third time offenders (n=1), 5% were fourth time offenders (n=1) and 5% reported multiple offences in the past (n=1).<sup>4</sup>

### *Setting*

The entire study, including participant recruitment and face-to-face interviews took place at the Finch Courthouse, located at 2201 Finch Avenue West in Toronto. This

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<sup>2</sup> The youth who indicated being involved in a plea bargain all received probation.

<sup>3</sup> Participants were asked to indicate how many times they had been charged with an offence.

<sup>4</sup> Access to youth court records was not granted to verify the number and nature of the charges.

location was selected as it is a relatively busy courtroom, with a heterogeneous population of youth from Toronto. Furthermore, the Finch Courthouse takes all criminal charges from Etobicoke and North York, and as a result, has an abundance of youth criminal matters. In order to ensure privacy and confidentiality, all interviews were conducted in a private room, located on the fourth floor of the courthouse. Permission to conduct the study at the courthouse was granted by Justices Weinper and Cole who reside at the courthouse, as well as by the Court Manager and the Ministry of the Attorney General.

### *Recruitment*

Following the disposition of a case young people who received an extrajudicial sanction or were sentenced to probation were sent to the probation office, located in room #207, on the third floor of the Finch Courthouse. During a meeting with a probation officer, young people were given a colourful flyer which advertised the study (Appendix A). It was made clear to probation that the name or any personal information about the youth was not required, but that probation was merely being asked to provide the flyer. Youth who were interested were directed to the researcher, who was either outside of the probation office, or in a private room located on the fourth floor of the courthouse. Youth were also approached while they were waiting to speak to probation, or after they had spoken to probation to ask if they were interested in participating.

### *Procedure*

Prior to beginning this study ethics approval was received by the Brock University Research and Ethics Board. Thus, all ethical guidelines were adhered to throughout the entire research process (Appendix B).

Youth between the ages of 13-15 were provided with a consent form to be signed by their parent or legal guardian (Appendix C). Additionally, they were also asked to sign

an assent form (Appendix D) in order to participate. For the purposes of this study, it was believed that youth who were 16 and 17 were competent to decide if they wanted to participate. Therefore, these participants were permitted to provide their own consent (Appendix E). Participants who were 13-15 were required to obtain the consent of their parent or legal guardian. In addition, consent and assent forms as well as a letter of invitation (Appendix F) were clearly explained to all participants, before they were asked to sign. A space was also provided on both consent and assent forms for youth to provide their email address, if they wished to have a copy of the results, upon study completion. It was made clear that their participation could be refused at anytime (refuse to answer a particular question, refuse to participate in the study) without negative implications. Participants were told that involvement in the study would not have any impact on their charges, and that legal advice or counsel would not be provided by the researcher. Furthermore, while confidentiality was guaranteed, young people were informed that any disclosure to the researcher about potential harm to self or others would be communicated to the police. Participants were also given the option of having their parent/legal guardian present during the interview.

Once consent was obtained, face-to-face interviews were conducted. This data-collection technique was selected, as interviews are one of the most commonly recognized qualitative research methods (Mason, 1996). Furthermore, the use of interviews allowed the participants to discuss their experiences around rights while involved in the justice system, and was therefore an appropriate tool for answering the research questions. All interviews were semi-structured in nature and ranged from 20-30 minutes in length. The decision to conduct relatively short interviews was appropriate considering that many participants had already spent a considerable amount of time at the

courthouse, had friends or family members waiting for them, or were in a rush to attend school or work. With the permission of all young persons, interviews were audio-recorded to ensure that their answers were accurately captured. All participants seemed very comfortable with the recorder, and appeared to be at ease throughout the interview period. Once the interview was complete, the purpose of the study was again explained and participants were asked if they had any questions about anything that had been discussed. At this time, they also received a \$10 honorarium as compensation for taking part in the study.

The interview was geared towards asking participants questions (see Appendix G) which were reflective of relevant literature as well as information presented on the *Justice for Children and Youth* Website. This Toronto based organization provides legal services to youth, and its website contains significant information designed to assist young people in understanding their legal rights as well as legal procedures (Justice for Children and Youth, 2005). Thus, this was a relevant resource to assist in creating appropriate interview questions as well as a hypothetical vignette. Additionally, literature on power inequalities between youth and adults in the criminal justice system (Tyyska, 2001) was used as a basis for questions to probe this topic

The interview script was organized into four sections. The first section dealt with *Rights and Citizenship* and included questions relating to the understanding that young people had of the *CRC* and the *Canadian Charter of Rights and Freedoms*. In this section, participants were asked to apply their understanding of legal rights and procedures to a hypothetical vignette involving a young offender named “Tommy.”<sup>5</sup> Next, participants

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<sup>5</sup> Vignette questions were based on information on the Justice for Children and Youth Website, with some additions made.

were asked a set of questions regarding their understanding of legal rights and legal terminology. Finally, the last section of the interview script was designed to look at plea bargaining, and the understanding that participants had of this process, as well as how they understood their rights during this procedure.<sup>6</sup> As previously mentioned, all interviews were semi-structured in nature allowing flexibility in questioning and probing.

### *Data Analysis*

Each interview was transcribed verbatim and assigned a code number to ensure confidentiality of participants. Once all 50 interviews were transcribed, answers from the interview questions were coded in order to focus on potential meanings emerging from the data (Esterberg, 2002). Considering that many qualitative researchers use grounded theory (Glaser & Strauss, 1967) to analyze their data and develop thematic categories, a similar approach was adopted for the present study. However, while classical grounded theorists argue for some expression of theoretical development to take place (Glaser & Strauss, 1967; Strauss & Corbin, 1998), this is not the only use of grounded theory. Rather, for the purposes of the present study a two-staged process of open and axial coding described by Strauss and Corbin (1998), among many others, was utilized as analytical tools in order to solely elicit and clarify themes. Thus, similar to recent qualitative studies which have adopted open and axial coding to create themes, and not generate theory (e.g., Clarke & Griffin, 2008; Matheson & McCollum, 2008), the present study employed grounded theory procedures, as opposed to using grounded theory methodology. It should be further noted that while these codes were created according to participant answers (i.e., various codes were elicited from the question: “*Can you explain*

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<sup>6</sup> If it became clear that a young person had not plea bargained (or if they indicated that they did not plea bargain) they were not asked the questions in the ‘plea bargaining’ section of the interview.

*what a right is?*”), the broader themes that emerged across all interviews (i.e., youth powerlessness) emerged with the second stage of axial coding and analysis.

Strauss and Corbin (1998) explain open coding as the process “... through which concepts are identified and their properties and dimensions are discovered in the data” (p.101). Thus, in order to identify the most prevalent and recurring themes and categories, the researcher becomes most familiar with the data (Esterberg, 2002), and compares and contrasts the texts for similarities and differences (Strauss & Corbin, 1998). Pre-established codes were not used, but rather the goal was to identify what was within the data using the participant’s own words initially and then the researcher’s thematic analysis. Once recurring themes began to emerge, they were color-coded to allow for easy identification.

The second stage of coding involved axial coding. While this type of coding differs from open coding, they are not necessarily discrete or distinctive stages, but rather proceed naturally together (Strauss & Corbin, 1998). Strauss and Corbin (1998) state that the purpose of axial coding is to “...begin the process of reassembling data that was fractured during open coding [and] categories are related to their subcategories to form more precise and complete explanations about the phenomenon...” (p.124). During this stage, for example, a researcher examines all of the data in a category, compares each piece of data with every other piece, and creates new codes for each concept (Hesse-Biber & Leavy, 2006). In the present study, analytical attention was most clearly directed towards key quotes identified during the first stage, and transcripts were again read line by line with additional focus on codes identified initially. Examples of quotes that corresponded to key themes were then stored in a word processing document, and analyzed revealing the most relevant themes in response to research questions.

Based on past research which has often constructed youth as understanding legal rights and procedures based on age (e.g., Grisso et al., 2003; Peterson-Badali & Abramovitch, 1992; Peterson-Badali et al., 1997), it was expected that older youth (16-17 years) would generally demonstrate better understanding in comparison to their younger peers (13-15 years). Yet given that youth are often socially constructed as a social group who lack power vis-à-vis adults (Tyyska, 2001) it was also expected that this lack of power would influence the ability of young people of all ages to effectively understand and exercise their rights. Given these expectations, age differences were examined within the present study. Specifically, the responses provided by youth aged 13-15 were compared to those aged 16-17 in order to see if any differences emerged. As previously stated, it should be reinforced that while the global responses to different questions were compared, the goal was not to make statistical conclusions.

## Findings

*Understanding of Rights and Legal Terminology in the Abstract*

The first set of interview questions were geared towards youths' understanding of their rights as a general concept. Participants were asked about their rights and the sources of their information. Of the 50 youth asked about whether they had ever heard of the *CRC*, only one participant indicated that he had learned about it. When asked to describe how he heard about the *CRC*, the participant responded:

I heard of it, but I don't know. My probation officer, he spoke about it. Well he doesn't really tell me a lot about it, like, you know in a conversation he would bring it up, you know? Cuz I was talking about other things that I was reading on papers. You know when you go into probation offices there are a bunch of posters all around. I was reading and asking him questions, like what's youth services, what's this, this was back two years ago, three years ago (P47).

Similar to the *CRC*, the findings also showed limited awareness of the *Canadian Charter of Rights and Freedoms*, with only 34.0% (n=17) of participants indicating that they had heard of the *Charter*. Interestingly, the one participant who had heard of the *CRC* was unaware of the *Charter*. Regardless of whether or not they had heard of the *Charter*, all youth were asked to describe its purpose. In response, 64.0% (n=32) said that they did not know, 20.0% (n=10) said that it was related to rights and/or freedom, 8.0% (n=4) said it was related to the law, and 8.0% (n=4) provided a response characterized as "other" (e.g. "the *Charter* is a statement").<sup>7</sup>

Considering factors such as cognitive development, maturity, the possibility of having more experience in the criminal justice system, and past research which demonstrates that older youth have more mature views about rights (Melton, 1980), one would expect that older youth ages 16 and 17, would possess a better understanding of the

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<sup>7</sup> Responses provided for every question are mutually exclusive, and therefore the same participant could not fall into more than one category.



*Charter* and the *CRC* compared to those between the ages of 13 to 15 years old.<sup>8</sup>

However, in the present study this was not the case. Despite being older (17 years), the participant who had heard of the *CRC* had not heard of the *Charter*. Likewise, age did not appear to play a role in determining whether or not participants had heard of the *Charter*.

In order to see how participants generally understood the concept of rights, they are asked to define a 'right'. Table 2 shows responses to this question for all participants.

Table 2

*Participant Definitions of what a 'right' refers to*

Definition	<i>N</i>	%
I don't know	4	8.0
Allowed to do	21	42.0
Entitlement/privilege	13	26.0
Responsibility	2	4.0
Responsibility and entitlement/ privilege	1	2.0
Beneficial	3	6.0
Other (e.g., "a right is a policy")	6	12.0
Total	50	100.0

As Table 2 demonstrates, over 90.0% (92.0%; n=46) of participants were generally able to define a 'right,' with only 8.0% (n=4) indicating that they did not know. While age differences were explored for this question, there was no pattern of differences based upon younger and older youth.

<sup>8</sup> "Older youth" refers to 16-17 year old participants, while "younger youth" refers to 13-15 year olds.

The most common definition provided by participants was that rights are something you are “allowed to do” (42.0%; n=21). One respondent said:

A right is when you’re allowed to do something, it’s when you know what you’re doing, and no one can tell you differently from it. When you have the right to know what’s going on, to know what you’re being charged with (P11).

Rights were also commonly defined as being an “entitlement/privilege.” One young person stated that rights are, “Something that you are entitled to, as a citizen that no one can take away from you” (P25). This response was divided into “entitlement/privilege” (26.0%, n=13) and “entitlement/privilege *and* responsibility” (“Something that is your responsibility that you are entitled to;” 2%, n=1). The following two quotations provide further illustrations of responses provided by youth, with the first young person defining rights as “beneficial” (6.0%; n= 3) and the second defining rights as a “responsibility” (4.0%; n=2):

Something given to you by the province, by the country, it’s basically something that you can use to benefit you. If your rights are broken police officers can take advantage of you by breaking your rights, and the case and the charge can go a different way. Also, keeping silent, you have this right, and basically you should keep quiet and talk to your lawyer before talking to police, that’s what I believe when they say that (P1).

I think that’s basically what you, what you have done and what are the circumstances of what you have done, and the responsibilities. I don’t know. A right is the responsibilities that you have, what you are supposed to do at certain times (P29).

Youth were also asked whether their rights could be taken away from them in order to see whether they understood the fundamental and universal nature of rights.

Table 3 shows responses to this question for all participants.

Table 3

*Participant Responses to the Question "Can your Rights be Taken Away?"*

Response	Total (N=50)
No, I am a citizen	24.0% (12)
No, they are mine	18.0% (9)
No , its in the law/charter	6.0% (3)
No, other (e.g., "no, its your life")	24.0% (12)
<i>No Total</i>	72.0% (36)
Yes, if necessary	16.0% (8)
Sometimes	12% (6)
<i>Total</i>	100% (50)

As Table 3 shows, 72.0% (n=36) of youth reported that their rights could not be taken away, 16.0% (n=8) of youth said "yes, if necessary," and 12.0% (n=6) said "sometimes." Age differences were explored in the accuracy of responses, and it was assumed that older youth would have a better understanding (Melton, 1980). However, there was no pattern of differences based upon age.

The idea that rights can be revoked "if necessary" or "sometimes," was reported by both older and younger youth. One young person who indicated that rights could be taken away, "if necessary" said, "Only if they have high authority, like a judge. When you violate them, somebody else's rights" (P20). Another young person explained that rights could "sometimes" be revoked by saying, "No, they can't be taken away because

they are mine. Except if you do something stupid or something bad, and then the lawyer comes and takes them away” (P44).

In explaining why rights could not be taken away, the most common response provided was, “no, [because] I am a citizen” (24.0%; n=12). An example of this response was provided by a youth who stated, “No, because they are your rights and you’re a citizen and you should have rights” (P39). Finally, an example of the response “no, they are mine” (18.0%; n=9), is illustrated well by one quotation, “No, because it’s mine, no one can take away your rights because your rights are for you, not for anyone else basically” (P11).

#### *Legal Concepts in the Abstract*

Youth were asked to define several fundamental legal concepts, including being asked to describe what it means to be *presumed innocent until proven guilty* as found in Section 11(d) of the *Canadian Charter of Rights and Freedoms*. Once again, one would expect that age differences would emerge in the understanding and application of concepts present in young people. Table 4 shows the relationship between participant responses and age group.

Table 4

*Participant Explanations of What it Means to be 'Presumed Innocent Until Proven Guilty' by Age*

<i>Response</i>	13 – 15 (n=14)	16-17 (n=36)	Total (n=50)
I don't know	35.7% (5)	8.3% (3)	16.0% (8)
Require evidence or proof	50.0% (7)	55.6% (20)	54.0% (27)
Must be found guilty & go to court	14.3% (2)	36.1% (13)	30.0% (15)
<i>Total</i>	100% (14)	100% (36)	100% (50)

Table 4 demonstrates that 13-15 year olds (35.7%; n=5) were more likely to report not knowing what it meant to be *presumed innocent until proven guilty* in comparison to older youth (8.3%; n=3). In total, 16.0% (n=8) of participants reported that they did not know what this term meant.

The most common response provided was that being *presumed innocent until proven guilty* includes the “requirement of evidence or proof of guilt” (54.0%; n=27). This response is illustrated by the following quotation, “That’s just, that you’re not guilty until your served innocent, unless there is evidence against you, no matter what people say. Unless they have physical evidence, surveillance evidence, I don’t think that anybody should be assumed guilty” (P20).

It is beneficial for youth to be aware of the information included in their youth court record. According to the *YCJA* (Section 119(1)(a) and Section 124) young people have the right to access their court record at any time before or after their case is finished. Considering the implications of having a record, participants were asked what type of

information they thought would be included in a youth court record. Table 5 shows the relationship between participant responses and age group.

Table 5

*Participant Explanations of What Type of Information is Included in a Youth Justice Court Record by Age*

Response	13 – 15 (n=14)	16-17 (n=36)	Total (N=50)
I don't know	57.1% (8)	27.8% (10)	36.0% (18)
Charges	21.4% (3)	27.8% (10)	26.0% (13)
Information about person & charges	21.4% (3)	27.8% (10)	26.0% (13)
Information about person & charges & sentence	0% (0)	2.8% (1)	2.0% (1)
Charges and sentence	0% (0)	2.8% (1)	2.0% (1)
Information about the person	0% (0)	8.3% (3)	6.0% (3)
Sentence	0% (0)	2.8% (1)	2.0% (1)
Total	100% (14)	100% (36)	100% (50)

As one would expect, Table 5 demonstrates that age differences emerged with respect to the fact that 13-15 year olds were more likely to indicate that they did not know what would be included in a youth justice court record (57.1%; n=8), compared to 16-17 year olds (27.8%; n=10).

The most common piece of information that youth indicated would be included in a youth record was information about a young person's "charges" (e.g., "all past and present charges"). In total, more than half (56.0%; n=28) of the participants mentioned "charges" as their response, or as part of their response. Specifically, 26.0% (n=13) reported "charges," 26.0% (n=13) reported "information about the person and charges"

(e.g., “where the person lives *and* charges”), 2.0% (n=1) reported “charges *and* sentence” (e.g., “if the person got an extrajudicial sanction or probation”) and 2.0% (n=1) reported “information about the person, charges and sentence” (e.g., where the person lives, what type of charge they got, and what their sentence was”).

Youth were asked to define a plea of both guilty and not guilty. Considering the implications of legal decisions, having an understanding of these concepts is essential. It was assumed that age would play a role in the understanding and application of these concepts. Table 6 shows the relationship between participant definitions of a guilty plea and age group.

Table 6

*Participant Definitions of a Guilty Plea by Age*

Response	13 – 15 (n=14)	16-17 (n=36)	Total (n=50)
I don't know	14.3% (2)	0% (0)	4.0% (2)
Admitting to the crime	64.3% (9)	88.9% (32)	82.0% (41)
Trying to get a lighter sentence	0% (0)	5.6% (2)	4.0% (2)
Other (i.e., you go to jail)	21.4% (3)	5.6% (2)	10.0% (5)
<i>Total</i>	100% (14)	100% (36)	100% (50)

As one would expect, Table 6 shows that two younger participants (14.3%), provided a response of “I don’t know.” The most common category of response was that pleading guilty means “admitting to the crime” (82.0%; n= 41). An example of this response is provided by the following quotations, “To admit to the charges that you’re being charged with and to tell them that what they are charging you with actually

happened” (P32). Likewise, another youth replied, “It means that you did do what you did and you are pleading guilty. You want to let them know that you did it and I don’t know, that you did it and you want it on your record I guess” (P13).

Few participants had a sophisticated understanding of the benefits of pleading guilty. Four percent (n=2) of participants defined a plea of guilty as “trying to get a lighter sentence.” One youth stated, “Pleading guilty is basically like taking the blame for what you’re charged with so your consequences are less, they are less, well they are not as bad” (P48). This specific definition is interesting, as it demonstrates some awareness of the plea bargaining process, in that pleading guilty may result in charges being dropped and/or a lighter sentence. It should be noted that the two youth who provided this response were also older (both were 16 years), and while one indicated that he had been charged three times in the past, the other had two past charges.

When asked to define a plea of not guilty, one (2.0%) younger participant (aged 15) reported that he did not know. Yet while age differences were explored, there was no other pattern of difference found based on older and younger youth. The most commonly reported response as indicated by the following quotation was that pleading not guilty means that “you are innocent” (52.0%, n=26). For example, one youth stated, “When you know you didn’t do anything wrong, and you’re basically defending yourself, so you feel you should not be charged with what you are being charged with” (P11). Additional categories of responses included defining a plea of not guilty as: “fighting the charge and going to trial” (18.0%; n=9), as well as “not accepting the charges” (16.0%; n=8). Furthermore, as stated in the following quotation, 12.0% (n=6) of participants acknowledged that despite pleading not guilty, an individual may still have been involved in the crime, “When you said you didn’t do it, but you did, but you plead not guilty” (P4).



This latter quotation suggests an understanding that it is one's right to plead not guilty and have the crown prove the offence beyond a reasonable doubt.

### *Hypothetical Vignette*

Forty-seven participants were asked questions relating to a hypothetical vignette in which a 17 year old boy named "Tommy" was charged with break and enter.<sup>9</sup> The vignette allowed for specific comparisons among respondents relating to rights violations. For all vignette questions, age differences were expected between older and younger youth, in knowledge and application of concepts. In the vignette, five rights violations appeared including: 1) The police did not inform "Tommy" of his charges upon arrest; 2) The police did not read "Tommy" his rights upon arrest; 3) "Tommy" was not provided with a phone call; 4) The police requested that "Tommy" answer questions without his lawyer present; and 5) "Tommy's" lawyer tried to force "Tommy" to plead guilty without fully explaining the consequences to "Tommy."

In order to see whether participants recognized the violations within the vignette, they were first asked, "*Were any of Tommy's rights violated? If so can you tell me which ones?*" Table 7 outlines the number of rights violations identified by all participants.

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<sup>9</sup> The decision to include the case study was made after the first three interviews were complete. Therefore, 47 participants (rather than 50) were asked the case scenario questions.

Table 7

*Number of Rights Violations Identified by Participants*

Number of Violations Identified	N =47	%
None	4	8.5%
One	5	10.6%
Two	12	25.5%
Three	20	42.6%
Four	6	12.8%
<i>Total</i>	47	100.0%

Table 7 demonstrates that 91.5% (n=43) of youth were able to identify that at least one of “Tommy’s” rights had been violated, with the majority (42.6%; n=20) identifying three violations. None of the participants reported all five violations; however, the five violations were all identified within responses. Age differences were explored for this question, and it was assumed that older youth would have been able to identify more violations, however there was no pattern of difference found.

The most commonly identified violation was right to a phone call (70.2%; n=33), followed by the right to know what the youth was charged with (57.4%; n=27), the right not to be forced to plead guilty (53.2%; n=25), the right to a lawyer (48.9%; n=23), and the right to be informed of legal rights upon arrest (10.6%; n=5).

The following quotation provides an example of a young respondent discussing three different rights violations:

He wanted to know what he was charged with and the police didn’t let him know and I think the questions they were asking him, I don’t think they should

be asking him a bunch of questions until maybe he's in court or something, and the phone call, he should have had it before they asked him questions (P29).

Next, participants were asked the question, “*Do you think that Tommy should answer all of the questions that the police asked him?*” In response, more than three-quarters of respondents (78.7%; n=37) said “no”, 10.6% (n=5) said “yes” and 10.6% (n=5) reported an answer in which they said both “yes and no.” Although age differences were explored, no pattern of differences emerged based on older and younger youth.

The most common category of response that emerged from this question was that “Tommy” should not talk to the police because “he did not have a lawyer present.”<sup>10</sup> Specifically, while almost a quarter of respondents (23.4%; n=11) referred to the fact that “Tommy” should not answer questions because “he did not have his lawyer,” 6.4% (n=3) indicated that he should not answer questions because “he did not have his lawyer *and* because anything he said could be used against him. To illustrate the latter response, one youth stated:

Tommy should not answer the questions, cuz they can use that against him. Whatever, when you get arrested or anything like that, cuz I've been through this and they ask you questions about what happened before you talk to your lawyer, so yea he was actually violating his rights, cuz he's supposed to talk to his lawyer before talking to the cops (P16).

An additional example of a participant's response is provided below by a young person who indicated a response of both “yes and no:”

I think that it is a good idea to answer the questions because you should be nice to police officers, they do help our society out a lot. But, no I don't think he should of if they didn't tell him what his rights were and what he was charged with when they first

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<sup>10</sup> Remaining responses for why “Tommy” should not answer any questions included: “it could be used against him (e.g., “Anything Tommy said could be used against him in court,” 21.3%; n=10), “he did not receive the information he wanted from the cops” (e.g. “Tommy was not told his charges,” 12.8%; n=6) and “it is Tommy's choice to answer questions, or not” (e.g., the police can't force Tommy to talk if he does not want to” 14.9%; n=7)

arrested him, then no I don't think he should have answered it. But it is a good idea to be nice and respectful (P25).

In order to meaningfully participate in the justice system, it is critical that youth are provided with the proper information to make effective legal decisions. Therefore, youth were then asked to explain if the consequences of pleading guilty should be explained to "Tommy" by his lawyer. In total, all but one youth (97.9%; n=46) said "yes," that "Tommy's" lawyer should explain the consequences. There was no pattern of differences between older and younger youth. In fact, the response that "Tommy's" lawyer should not explain the consequences was provided by an older participant (17 years) who stated, "No, I don't think his lawyer should need to explain" (P49).

The most commonly reported rationale for saying "yes" was so that "Tommy would understand the consequences of pleading guilty" (72.3%, n=34).<sup>11</sup> For example, two youth responded:

Yes, he should know the consequences after what he has done. He needs to know why he is pleading guilty, like if he doesn't know why he's pleading guilty and what is going to happen on behalf of him pleading guilty he shouldn't plead guilty if he doesn't know what is going to go on (P13).

Yea, cuz if you don't know what you are going to plead guilty for, why you going to plead guilty if you don't understand (P21).

In the final question pertaining to the vignette, participants were asked if they felt that young people should always follow the advice of their lawyer, even if they disagreed. Although age differences were explored, there was no pattern of differences found based on older and younger youth. In response, almost two-thirds of respondents (65.9%; n=31)

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<sup>11</sup> Additional responses provided for whether "Tommy's" lawyer should explain the consequences included, "yes, it may not be the right decision (e.g., "Tommy's lawyer should explain everything because pleading guilty may not be the best thing," 8.5%, n=4), "yes, he has the right to know" (e.g., "Tommy has the right to know the consequences of pleading guilty," 8.5%, n=4) and "yes, its his lawyers job" (e.g., "It's the job of Tommy's lawyer to explain the consequences," 8.5%, n=4)

said “no,” 19.1% (n=9) said “yes, because a lawyer has more experience,” 10.6% (n=5) said “sometimes” and 4.3% (n=2) stated that they “did not know.” Young people who said “no,” based their response on the fact that a “lawyer may not always know best” (25.5%; n=12), and that “as a young person, you should ultimately make your own decisions” (40.4%; n=19). The response that young people should make their own decisions was most commonly reported across both age groups: (13-15 year olds (46.2%; n=6) as well as by 16-17 year olds (38.2%; n=13)). For example, one youth stated:

No, if you disagree follow your heart and do what you think is right. If you think that pleading guilty is best for you, and your lawyer is saying no, then don't do it. But at the same time, do your research. Find out what the consequences are, what the pros and cons are of every step you make, because whatever you choose, that is going to be on your record for the rest of your life or for until your record is able to be cleared. You should never just jump into something without knowing the facts (P7).

#### *Understanding of Rights and Legal Terminology in Relation to Own Case*

Youth were asked about their understanding of legal procedures and rights in relation to their own case. Understanding rights and procedures is critical for an accused to be an autonomous decision-maker. Upon arrest, the two most common rights that youth recalled being informed of included the right to a lawyer (68.0%; n=34) and the right to remain silent (44.0%; n=22). However, 4.0% (n=2) of youth stated that they did not remember being informed of any rights when arrested. Youth who were informed of their right to a lawyer most frequently explained their right in terms of “being able to call and speak to a lawyer” (58.8%; n=20): “[It] means that you have a right to talk to a lawyer about any questions, or anything that you have to ask about what you have been charged with” (P37). Further categories of responses included defining the right to a lawyer as, “you can have a lawyer represent you” (29.4%; n=10), and “you should not talk to anyone without your lawyer present” (8.8%; n=3). The latter definition is

illustrated by one youth who replied, “It means that you really don’t have to talk to anyone unless your lawyer is present and this person is there to help defend you” (P25). Finally, one participant (2.9%) indicated that he was unaware of the meaning of this specific right. While age differences were explored, no pattern of differences emerged with respect to how youth defined their right to a lawyer.

Despite the high number of youth who recalled being informed of their right to a lawyer (68.0%; n=34), none of the participants indicated that they had a lawyer present when questioned by the police.<sup>12</sup> In fact, almost three-quarters of the entire sample (72.0%; n=36) stated that when they were questioned, they were alone with the police.<sup>13</sup> The majority of participants (10.0%; n=5) who were accompanied during police questioning indicated that their co-accused was with them.

All 44.0% (n=22) of youth who indicated being informed of their right to remain silent were able to explain how they understood this right. Age differences were explored again, assuming that older youth would demonstrate a better understanding of this right, however there was no pattern of differences found. The most frequent category of response was that the right to remain silent means, “It is your choice whether or not to talk” (63.6%; n=14). An example of this response is provided by a participant who stated, “If the officer asks me stuff, and if I don’t feel like answering what they say, I have the right to remain silent” (P8). Likewise, a second youth replied, “Like you don’t have to say anything if you don’t want to” (P21).<sup>14</sup>

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<sup>12</sup> ‘Questioned by the police’ refers to when young people were originally questioned (i.e., on the streets) as opposed to being questioned or detained at the police station.

<sup>13</sup> In explaining that he was alone when questioned by the police, one respondent stated: “It was just me and the police when they questioned me” (P27).

<sup>14</sup> Categories of responses also included defining the right to remain silent as, “don’t talk” (e.g., “don’t talk at all,” 18.2%; n=4), and “don’t talk, or it will be used against you” (e.g., “don’t talk or the police might use it against you in court,” 18.2%, n=4)

*Understanding the Role of their Lawyer*

For anyone involved in the criminal justice system, understanding the importance of obtaining legal representation is vital. Therefore, all youth were asked to explain the job of their lawyer. Table 8 shows responses for all participants.

Table 8

*How Participants Explain the Job of their Lawyer*

Response	Total (n=50)
Defend/represent	48.0% (24)
Defend/represent & other	28.0% (14)
Protect me and/or my rights	8.0% (4)
Protect me and/or my rights & advise me about what to do	4.0% (2)
Advise me about what to do	2.0% (1)
Other (e.g., “twist the story for my benefit”)	10.0% (5)
Total	100.0% (50)

Table 8 demonstrates that the majority of youth seemed to understand that the job of their lawyer is to “defend and represent.” Specifically while almost half (48.0%; n=24) of the participants replied “defend and represent,” 28.0% (n=14) said “defend and represent *and* other” (e.g., “my lawyer should defend me and listen to what I have to say”). Thus, in some cases, youth indicated that they had some power over directing their lawyers’ decisions. The response “defend and represent” is illustrated by the following two quotations:

The job of a lawyer is to defend my case and get me the best possible sentence if I'm pleading guilty. Or make sure I'm not pleading guilty if I have a chance to fight the case (P15).

To defend you even if you are guilty or not guilty and to advise you of what to do, and also present you to the court or the crown at the time of your trial (P37).

If age played the most significant role, one would expect that younger youth would be less knowledgeable, and perhaps indicate that they were unaware of their lawyer's role. Yet age did not appear to play a role in this question, and in fact there was consistency across age categories in their responses to this question (e.g., "defend and represent").

In addition, youth were asked how lawyers should treat them, assuming that as hired lawyers they should provide advice but also be directed by the client. Despite the fact that all youth were able to explain the job of their lawyer, this was not the case when asked to explain how their lawyer should treat them, with 6.0% (n=3) stating a response of "I don't know." The most common category of response provided by all youth was that they should be treated with "respect" by their lawyers. In providing this response, one youth remarked, "With respect. Listen to what I got to say and not make fun of me, or not throw my ideas out" (P43). A further example is offered by a participant, who stated he should be treated, "With lots of respect, and as a person, just as he is, especially because you're paying him to do so" (P25). The category of "respect" was divided into "respect" (38.0%; n=19) and a combination of "respect and *other*" (34%; n=17). The latter response was provided by a youth who stated, "Respectfully, and your lawyer should know when you did something and when you didn't do something" (P44).

A further category of response included being treated "like a proper client" (16.0%; n=8). One respondent said, "My lawyer should treat me like a proper client.



When I have a court date he should come on time, give me proper legal advice, he works for me” (P42). The remaining youth reported that their lawyer should treat them “like a friend” (e.g., “my lawyer should act like a friend would act,” 4.0%; n=2) and a combination of “like a friend *and* patiently (e.g., “my lawyer should act like my friend, and also be patient with me,” 2.0%; n=1).

Forty-seven youth were asked if they felt comfortable voicing their opinions and concerns with various criminal justice professionals.<sup>15</sup> This question was important to ask as Article 12 of the *CRC* states that young people should have the opportunity to be heard in any judicial or administrative proceedings that affects them. Over three-quarters (78.7%; n=37) of respondents reported that they had been provided with the opportunity to voice opinions and/or concerns with their lawyer. In relation to this question, one youth replied, “Yeah I always tell my lawyer everything, because he's going to fight for me, he should know the truth” (P15). The remaining participants indicated that they either did not have a lawyer (19.1%; n=9), and one youth (2.1%) reported that she had not voiced opinions or concerns with their lawyer. In both questions explained above, age differences were explored assuming that older youth would feel more confident in explaining how their lawyers should treat them and more comfortable speaking to their lawyer, but there was no pattern of differences based upon age.

### *Understanding Plea Bargaining*

Regardless of whether or not plea bargaining was a component of their case, all youth were asked to define the term *plea bargaining* because it is a fundamental practice

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<sup>15</sup> The decision to ask youth if they felt comfortable voicing opinions and concerns with justice professionals was made after the first three interviews. Therefore, this question was asked of 47 participants (as opposed to 50).

in the operation of the justice system. Age differences were explored, assuming that older youth would have a better understanding of this term. Table 9 shows the relationship between participant responses and age group.

Table 9

*Participant Definition of a 'Plea Bargain' According to Age*

Response	13-15 (n=14)	16-17 (n=36)	Total (n=50)
I don't know	78.6% (11)	44.4% (16)	54.0% (27)
Lighter sentence	7.1% (1)	27.8% (10)	22.0% (11)
Pleading/bargaining	0% (0)	8.3% (3)	6.0% (3)
Making a deal	7.1% (1)	8.3% (3)	8.0% (4)
Other (e.g., "a bribe")	7.1% (1)	11.1% (4)	10.0% (5)
<i>Total</i>	100.0% (n=14)	100.0% (n=36)	100.0% (n=50)

Table 9 demonstrates that over half of the respondents (54.0; n=27) were unaware of what the term *plea bargaining* referred to. A higher percentage of 13-15 year olds (78.6%; n=11) reported not knowing how to define a plea bargain, in comparison to 16-17 year olds (44.4%; n=16).

The most commonly reported definition (22.0%; n=11) was describing plea bargaining in terms of "receiving a lighter sentence." For example one youth said, "A plea bargain is used to lighten your sentence as decided by the judge and the crown" (P48). Similarly, another respondent stated:

Plea bargain, that means that if you plead guilty, instead if you were not to plead guilty and then found guilty you would get 200 hours probation and community service, and then more conditions, but if were to just to plead guilty right away I think they would reduce the sentence and reduce what it is you have to do because

you understand that you are guilty and that your not gonna waste time and they bargain with you, they meet you not half way, but they reduce it (P1).

To further illustrate some participants' responses, the following quotation provides an example of plea bargaining being explained in terms of "making a deal" (8.0%; n=4). "A plea bargain is a deal, just by the name of it, just from knowing the word bargain; I think its like we will cut off this, if you agree that you did this" (P20). This particular response is interesting because while some participants knew that they "made a deal," in their own cases, they were unaware that this "deal" was actually called a plea bargain. Finally, the next quotation offers an illustration of plea bargaining being categorized as "pleading/bargaining" (6.0%; n=3), "By the name I think it has to do with pleading guilty, bargaining, creating a plea" (P6).

In total, just less than half of respondents (44.0%; n=22) indicated involvement in a plea bargain in their own cases. These youth were asked specific questions about their experiences with this procedure, including being asked to describe what influenced them to accept the bargain. Table 10 outlines participant responses for both older and younger youth.

Table 10

*Factors Which Influenced Participants to Accept a Plea Bargain by Age*

Response	13-15 (n=4)	16-17 (n=18)	Total (n=22)
I don't know	75.0% (3)	5.6% (1)	18.2% (4)
Get it over with/time & other	25.0% (1)	27.8% (5)	27.3% (6)
Get it over with/time	0% (0)	27.8% (5)	22.7% (5)
Get it over with/time & lighter sentence & job	0% (0)	5.6% (1)	4.5% (1)
Lighter sentence	0% (0)	11.1% (2)	9.1% (2)
I did the crime	0% (0)	11.1% (2)	9.1% (2)
My family wanted me to	0% (0)	5.6% (1)	4.5% (1)
Best decision for me	0% (0)	5.6% (1)	4.5% (1)
<i>Total</i>	100% (4)	100% (18)	100% (22)

As indicated in Table 10, 18.2% (n=4) of youth reported that they did not know what influenced them to plead guilty. As one would expect, a higher percentage of 13-15 year olds (75.0%; n=3) indicated that they did not know what influenced them to plea, in comparison to 16-17 year olds (5.6%; n=1). The most common category of response relating to why youth participate in a plea bargain was to “get it over with/time” (e.g., “to quickly finish court in order to save time”). This category was divided into a combination of “get it over with/time *and other*” (e.g., “to get it over with and have my freedom,” 27.3%; n=6), “get it over with/time” (22.7%; n=5) and a combination of “get it over with/time *and job and* to receive a lighter sentence” (4.5%; n=1). The importance of

getting the process over with in order to return to work was illustrated by a young person who said:

Time, basically the time was cuz of employment. Money for sure because now I do need to get a job in order to move. I was living with my surety in a two bedroom apartment with five people, it wasn't working (P25).

Finally, despite only being reported by one participant (4.5%), the explanation that a plea bargain was accepted because it was “the best decision for me” is worth noting.

Not only does this response demonstrate the importance of independent decision making, but also the ability of this respondent to consider his own best interests:

[I accepted] because I was notified of every consequence that could happen or positive effects that could happen, if I made this step, or if I made that step, so I took everything into consideration and decided what was best for me (P7).

Youth who indicated being involved in a plea bargain (44.0%; n=22), as well as one youth who turned down a plea bargain were also asked to explain whether or not they felt that they could have refused the bargain.<sup>16</sup> Of these youth, 65.2% (n=15) stated that they could have refused the plea bargain, whereas 34.7% (n=8) indicated that they could not have refused. Although age differences were explored, assuming that older youth would have better understood that they could refuse the plea bargain, no pattern of differences emerged between younger and older youth.

Out of the respondents asked (46.0%; n=23), 60.9% (n=14) felt that they could have refused the plea bargain because they were “given the choice to do so.” To illustrate, one young person replied, “Yeah, I could have refused because my lawyer explained it to me, and then asked me if I wanted to accept it.” (P5). A second category of response provided by one (4.3%) participant was, “yes, I did refuse.” This response is explained by the following quotation, “I couldn't do it. I couldn't testify against my friends” (P14).

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<sup>16</sup> A total of 23 participants were asked if they felt that they could have refused the plea bargain.

As illustrated by the next quotation, 13.0% (n=3) of participants stated that they could not have refused the plea bargain, because they wanted to get the process over with, “Yea, I could have refused, but I didn’t want to so I could come out faster” (P3). This idea is further demonstrated by a young person who explains why he accepted a plea bargain, as opposed to turning it down:

I knew that if they told me that my next court date would be tomorrow, I would go and say innocent, but just because I don’t want to wait another year, I said I’m guilty. It’s just time consuming and that’s the reason I wasted all this time (P20).

Similarly, 21.7% (n=5) of participants who indicated that they plea bargained reported that they could not have refused the bargain because there was too much evidence against them. This category of response is illustrated well by the following two quotations:

No, I could not refuse it. I would have got a long time in jail if I did that because of the evidence and they pretty much saw it, they would have seen that as me trying to be a jerk (P48).

Kind of, I would have pleaded not guilty if they didn’t find me in the house, but they did, so there is no way you can fight that. My lawyer said it’s better for me to plead guilty cuz I would just get probation, but if I plead innocent I might lose (P50).

### *Voicing Opinions and Concerns with Criminal Justice Officials*

As previously mentioned, 47 respondents were asked if they felt comfortable voicing their opinions and concerns with justice professionals including, police officers, lawyers and judges. Clearly this is important as a decision-maker in the justice system. No pattern of differences emerged between older and younger youth. Responses indicated that three-quarters of the youth (74.5%; n=35) had not voiced any opinions or concerns with police officers. A young person describes not talking to police officers by saying:

No, because at the beginning the cops say that they are your friends and everything, but in the end you know that whatever you say they can use against you, and they can send you to jail or stuff like that (P16).

Another youth describes not talking to police, despite being provided with the opportunity:

Like to speak to them? Yea like I had opportunities but I didn't really want to. It's because it doesn't really matter, they don't really care what you say, they just care about their job and getting paid. Nobody feels comfortable going to the cops (P47).

Even while a quarter (25.5%; n=12) of youth indicated that they had or would talk to police officers, some youth said that they would only do so under certain circumstances, or that they would have to be cautious when doing so. As an illustration, one young person responded, "Yea, they always ask if I understood, they always check to see if I'm alright, and if I need another call to my mom, but you never know if they're going to try to use something and turn it against you" (P22). Finally, another youth stated, "Well it depends. Yea I guess so, for protection, but they are assholes too, you know what I mean? You can't really trust them" (P38).

When asked if they had voiced opinions or concerns with the judge, 51.1% (n=24) of youth said "no." This response is further explained by a young person who stated, "Not really, because most judges you know they don't seem like the type of person you could have a conversation with so I would never see myself talking to one" (P24). Similar to the reasoning provided for not speaking to police officers, youth also indicated a lack of trust in judges, "Not really, sometimes I don't feel like I trust certain amounts of people, it's a trust issue" (P11).

Twenty percent (n=10) of respondents indicated that they had voiced opinions and/or concerns with a judge, and 16.0% (n=8) said that they would be willing to,

although they had done so in the past. In explaining his conversation with a judge, one participant said, “I most definitely talked to the judge, cuz that’s the person who’s gonna determine my future. We talked about my future, what my future goals are” (P20).

Finally, 10.6% (n=5) of youth indicated that “if they had something to say they would tell their lawyer, who would tell the judge.” For example, one respondent said:

Well with the judge I don’t really get to speak to him, everything normally goes through my lawyer. The judge is looking at you just like a police officer would be looking at you. He would look at you guilty even though there is kind of a way you could be innocent. It’s because they say when you approach the judge you’re not guilty in the judge’s eyes you know, everybody’s innocent. But I don’t believe that. It’s because the judge looks at you guilty and off of what he hears and what he sees he can determine, right (P47).

### *Perceptions of Power*

Despite demonstrating some understanding of their rights and legal terminology, youth across all groups expressed feeling a lack of power vis-à-vis criminal justice professionals, which influenced their ability to effectively understand and exercise their rights. Through the qualitative interviews, it became clear that despite constructing themselves as being different than adults, youth also felt that they were entitled to fundamental rights. Yet youth also talked about experiencing a lack of power in a number of ways. For example, youth discussed instances of being harassed, unfairly treated and subjected to rights violations. Furthermore, even though youth were able to recognize rights violations, they expressed lacking a voice to stand up for themselves when their rights had been personally abused. Finally, some youth indicated that they lacked an adequate explanation of their rights. These feelings of powerlessness as described by participants influenced their ability to effectively understand and exercise their rights.



*Youth as Different from Adults*

The interviews revealed that young people across all age groups constructed themselves differently than adults and viewed themselves as being less powerful than adults. While the results demonstrate that age played a role in the understanding that young people have of certain legal concepts (i.e., presumed innocent until proven guilty, consequences of a criminal record, defining plea bargaining), age alone did not consistently account for why youth did not always effectively exercise their rights. The interviews also showed that young people constructed themselves differently than adults, in terms of maturity, development and because as young people, they make mistakes:

We are young, we don't always think properly, so you can't blame the youth (P40).

Yes it's very important for youth to know rights. We are still growing up, youth need to know how to handle themselves in the justice system (P40).

Yea, Tommy's lawyer should explain consequences of pleading guilty cuz he doesn't know what to do, the court system. Youths don't really know, so they should get more educated on that (P28).

You should listen to your lawyer, because they know better then you, as in a young offender. I'm a young offender, I would understand how it is to listen to them, and because we are younger we don't know about this law. We do know about the law, we just don't know exactly what will happen, the consequences if you do theft under, or failure to comply, its really hard to know, because you're a young offender. Pretty much they should listen to their lawyer; then again they shouldn't because it's their choice, but they should still sit down and talk to them, like I do with my lawyer (P13).

They think young people do things that are bad and they think every young person is the same (P44).

The right choices have been made for me cuz I thought about things and it wasn't the best idea, the best choice I ever made and maybe cuz I plan to go somewhere in life, with a criminal record you can't go as far as you like, and if I do this I have my charges dropped and I have no criminal record so I can achieve my goals (P26).

*Youth as Bearers of Rights*

Despite perceiving themselves as different from adults, youth nevertheless believed that they were entitled to the same rights and respect as adults. To illustrate, as previously stated, when asked how their lawyer should treat them, nearly three-quarters (72.0%; n=36) of youth reported that they should be treated with respect. Furthermore, for some participants, there existed a belief that their positioning as young people vis-à-vis adults made it especially vital that they not only knew their rights, but that they were also guaranteed their rights. The importance of understanding rights was even more vital for the participants due to their positioning as accused youth:

Yea, youth should know rights, if they get arrested they should know what should happen to them, be prepared about what should be said, and not said cuz they can use it against you (P24).

Youth should know their rights so they know for themselves, even if the police don't tell them, they will be like I have a right to call my lawyer, or have a phone call, or I have a right to know all my rights (P37).

It's important for youth to know what their rights are, because its better for them so they know what's happening and they can understand what they are going through, so they know something about it and they can do something that prevents them from going to jail (P16).

Yea, youth should know their rights. I get stopped almost daily, and if I knew my rights I would just walk away. I'm stopped at school, in front of my house. My mom tells me it's because of the way I look, the way I dress (P36).

*Decision Making*

In addition to feeling entitled to rights, youth also expressed the importance of individual decision making. Overall youth felt that they were provided with opportunities to make their own decisions. Nearly 90.0% (88.0%; n=44) of youth reported that they had not been forced into doing anything by criminal justice officials. No pattern of differences emerged between older and younger youth. Participants who stated that they felt forced

into doing something reported being forced to talk to their parents (2.0%; n=1), being forced to plead guilty (4.0%; n=2) and being forced to do community service (2.0%; n=1). Additionally, as illustrated by the following quotation, 4.0% (n=2) of youth indicated that they were not able to make their own decisions, but rather made choices:

I don't know. I don't think I was forced to do anything because I kind of made my own decisions. In the court you don't really get to make decisions, you get options, you get to pick your options, and you don't make decisions. You don't get to say that you want this to happen, it won't happen. They give you what's going to happen, and you get to pick what you want (P9).

#### *Unfair Treatment and Harassment*

Although they constructed themselves as bearers of rights, many youth saw themselves as having less power than criminal justice officials, due to the unfair treatment and harassment they received as accused youth:

They just assume that when a YO walks in that they are automatically guilty. If you don't give information they beat you, so your rights are violated. My friends were beaten by officers, it's a crooked system, everyone works for the cops (P6).

In a way young people do know their rights. They will give you your rights in court; they will give you all your rights. But once you're in the police station, behind places a lot of people can't really see, that's where they mess up, that's where they don't care (P38).

When police stop you they aren't allowed to take your name down for no reason, that happens at least everyday, and the only time police are allowed to frisk you is when the arrest you but they still choose to frisk you for no reason, and sometimes they threaten me, or they like to get physical, stuff like that (P42).

It's because the theory of the cops is history repeats itself, I heard that too many times. They think that once you're in this category of committing crimes, you're going to always be in that category. I don't think that's true, cuz I've seen a lot of people in there who have changed their lives around and they are religious, living their life a different way, wishing they could have been back on the road (P47).

### *Rights Violations*

The qualitative interviews revealed that youth experienced personal rights violations. When asked if any of their own rights had been violated, over one-third of the total sample (34.0%; n=17) of youth said “yes”, with the majority (24.0%; n=12) reporting police violations:<sup>17</sup>

Yes, I was violated when I was caught by police, I was slammed against the floor cuz my hands were not at the back, but my hands were at the front so the guy came and slammed me on the floor (P2).

The phone call, they took long to give me the phone call. Maybe they didn’t want to give it to me. When I asked to speak to my lawyer, they did it right away, but when I said I want to talk to my parents, they weren’t really responding (P28).

Additional rights violations included the violation of personal freedom and time (8.0%; n=4). For example, one youth stated, “I keep having to miss school, and I’m getting marked as skipped mostly; the court system doesn’t really care that I have to go to school, and I have to come here regardless (P39). Finally, a young person reported that while his rights were not necessarily violated, he felt forced to plea guilty (2.0%; n=1):

I do not think that there are any rights that have been taken away from me. However, the system is made in a way that if you do plead guilty to everything, you do get through it a lot faster, and that is my main priority. So I did plead guilty to some, I was not guilty to all that was in the disclosure. However, if I would have had to change the disclosure, there would have been another court date. I think that was not a violation of rights, that’s just the way the system works, and I don’t like it (P25).

### *Lacking a Voice to Stand up Against Violations*

As previously illustrated, youth had the ability to recognize when their rights were violated. Likewise, in the hypothetical vignette regarding “Tommy,” nearly all (91.5%; n=43) of the 47 respondents asked identified that at least one right had been violated. Yet

<sup>17</sup> When asked if any of their rights had been violated, 24.0% (n=12) reported police violations. Ten additional youth (20.0%) also spoke of police violations throughout other points of the interview. Therefore, 44.0% (n=22) of youth in total indicated that their rights were violated by the police.

despite being aware of rights violations, youth perceived themselves as lacking the voice to stand up against violations. This point is illustrated by three youth who explained why they were unable to stand up against rights violations:

Youth can't do anything about violations, a lot of stuff in the law now is racial profiling, so I don't think people would choose a young, black male over a 20 year veteran cop, they would not take my side (P42).

I don't think that there is much I can do about rights violations, cuz well I don't really know, but I think from their point of view I'm just another minor, who got in trouble with the law, and what does my opinion mean. How many people are there out there who think the same thing? (P26).

At the police station there is a guy that listens to complaints, so I tried to talk to him, but he told me to sit down, and said 'fuck bitch, sit down,' he worked with them, the cops, they are all connected to the cops in a crooked way (P6).

### *Lack of Explanation*

Finally, youth felt as though justice professionals did not always do an adequate job of explaining rights to them.<sup>18</sup> Even if their rights were mentioned, some youth felt that they did not actually comprehend what was being said. While some youth acknowledged that their lawyers did take the time to explain important information to them, this was not the case in their interactions with all justice professionals:

I believe that most times legal professionals don't really explain rights to youth, but their lawyers do when they get in trouble, and most parents do (P32).

Like I remember that one day when I got charged the police didn't explain anything to me (P12).

Our rights are not really explained, cuz they just, we want to know in detail, detail is a bit more than what they want to give, but we want to know what our full rights are what turns can set something else off but they don't. Like I called the

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<sup>18</sup> As part of the interview script, youth were not directly asked if justice professionals adequately explained their rights to them. However, 54.0% (n=27), indicated throughout the interview that their rights were not clearly explained.

police and told them what happened, this is what I got charged with and asked for advice, and they were like go to court, that tells me what I need to know (P25).

People in the justice system don't even explain rights. If they do it they read it fast, they have to explain, they just, I never heard them read my rights to me (P28).

Well legal professionals do a good job, but it doesn't go through the youth's head. You need someone, not a cop, to tell you that you need someone else (P50).

Overall, the results demonstrate that it is the perception of a lack of power vis-à-vis adults in general, and criminal justice professionals in particular that seemed to have the strongest bearing on the ability of youth, across all age groups, to invoke their rights when they wanted to. Although youth felt entitled to rights as young people, and particularly as accused youth, they expressed experiencing a lack of power, which they talked about in a number of ways. For example, participants indicated that they were often subjected to unfair treatment and harassment. Furthermore, even though they recognized rights violations, they expressed lacking a voice to stand up for themselves when their own rights had been infringed. Finally, youth often felt as though they lacked an adequate explanation of their rights. This lack of power as explained by youth in the present study ultimately influenced their ability to effectively understand and exercise their rights. Thus, the respondents were clear that while knowledge of rights is necessary, it is not sufficient to ensure that their rights are protected and respected.

## Discussion

The purpose of the present study was to examine two questions including: 1) *How do youth who have been charged or found guilty of a criminal offence understand their due process rights, and their rights where plea bargaining has occurred?* and; 2) *Are there power differences experienced by young people based upon their age?* These questions were addressed by asking 50 young offenders between the ages of 13-17 a set of interview questions pertaining to their rights and experiences within the legal system.

### *Limitations*

Participants fell between the ages of 13-17 and were all recruited from the Finch Courthouse. Only those young people who were present at the courthouse during the course of the study and who chose to participate through seeing and responding to a flyer, as well as youth who did not receive a custodial sentence were eligible to participate. Furthermore, a higher number of 16-17 year olds, as opposed to 13-15 year olds were included in the sample. However, it should be noted that while the sample may be somewhat limited, general statements can still be made about the findings. Considering the difficulties associated with gaining access to youth offenders, using a sample of size of 50 was relatively substantial for the purposes of a qualitative study. Furthermore, findings of this study such youth powerlessness (i.e., through feeling harassed) emerged consistently throughout the interviews, and may therefore be likely to apply to other populations of young offenders.

Despite having a higher number of both males and older youth (16-17 years) in the present study, these characteristics are in fact representative of youth in the justice system. A Statistics Canada report by Thomas (2008) revealed that in 2006/2007, 16 year olds accounted for 26% of cases and 17 year old olds accounted for 30%. In comparison,

15 year olds appeared in 21% of all cases, and youth aged 14, 13 and 12 had even less involvement, accounting for 13%, 6% and 2% of all cases. Furthermore, this report also indicated that males accounted for 73% of youth court cases, and they predominated in all age groups.

All interview data were based on the self-reports of participants, which were not verified with court records. As a result, it is possible that information reported by participants was not entirely accurate. Likewise, the perceptions that participants had regarding their encounters with justice professionals may not have been indicative of reality. For instance, some youth may have forgotten being informed of certain rights, when in fact they were. It is also possible that participants may have been under the influence of drugs and/or alcohol which may have influenced their perceptions of what happened when they were arrested. Furthermore, considering that youth were interviewed immediately after being in court, or talking to a probation officer, they may have been under stress, which could have further impacted their memory. Finally, it is possible that the youth knew more about their rights and legal procedures than they were able to articulate. Nevertheless, the purpose of the present study was to listen solely to the voices of youth, and therefore confirming participant accounts was not a primary concern.

Perceptions of youth in conflict with the law are critical to the repute of the administration of justice. Despite these limitations, directly allowing youth in conflict with the law to openly discuss their experiences with the legal system and with their rights provides important insight into their understanding, and into their experiences as accused youth within the justice system. Even regardless of the “accuracy” of responses, it is critical to examine youths’ subjective perceptions and experiences. Doing so is important considering that youth are active in constructing their experiences and



perceptions, and it is these perceptions which ultimately shape their attitudes, and affect their choices, actions and behaviour.

### *Discussion of Findings*

Consistent with some previous research (e.g., Peterson-Badali & Abramovitch, 1992; Peterson-Badali et al., 1997), the present study found that for some legal concepts and rights (i.e., presumed innocent until proven guilty, information contained in a youth justice court record), older youth (16-17 years) demonstrated enhanced understanding in comparison to younger youth (13-15 years). Specifically, while older were able to understand and respond to specific questions and identify fundamental legal rights, a higher percentage of younger youth reported that they were unaware of the answer. However, similar to some past findings (e.g., Peterson-Badali & Abramovitch, 1992), this was not consistent, and for some questions the opposite finding emerged, with a higher percentage of older youth indicating that they were unable to respond (i.e. explaining how a lawyer should treat their client).

While having an understanding of legal concepts and rights is clearly important, the findings demonstrate that it is not sufficient to ensure that youth will exercise their rights in an adult-led criminal justice system. Participants from every age group expressed a lack of power in comparison to adults and criminal justice officials, which enabled them to effectively exercise their rights. Through the qualitative interviews, youth discussed experiencing a lack of power in a number of ways. For example, youth felt as though they were often harassed, unfairly treated and subjected to rights violations. Furthermore, even though youth were able to recognize rights violations, they expressed lacking a voice to stand up for themselves when their rights had been personally abused. Finally, some youth indicated that they lacked an adequate explanation of their rights. Thus, while

feelings of powerlessness did not necessarily cause participants to not invoke their rights, it seemed to have the most influence on the ability of youth in the present study, to effectively understand and exercise their rights when they wanted to.

Thus, even though youth are constructed as being citizens with inherent rights under the *YCJA* (Denov, 2007), young people are not necessarily exercising their fundamental legal rights when they need to. The lack of power faced by youth in the present study, and the problems that a lack of power creates is not unique to this specific population. Rather, youth as a social group are subjected to inequalities based on an imbalance of power. As explained by Tyyska (2001):

“...The main conclusion to be drawn from the range of adversity facing youth today is that most of their problems have deep roots in general inequalities, based on social class, gender, race and ethnicity. Notably, young age itself is a basis of inequality...” (p.224).

#### *Construction of Youth as Rights-Bearing Citizens*

Overall, youth in the present study seemed to lack an understanding of where their rights originated from. In fact, out of the 50 youth interviewed only one 17 year old had heard of the *CRC*. Considering that Article 42 of the *CRC* outlines the responsibility of State Parties to make the provisions and principles of the *Convention* known to both adults and children, it is problematic that this knowledge seems to be unavailable for youth in conflict with the law. Yet a lack of knowledge did not only pertain to the *CRC*, but also to the *Canadian Charter of Rights and Freedoms*. This finding is interesting when taking into account the fact that the majority of youth interviewed were high-school age, where learning about rights is component of the Grade 11 and 12 Social Studies and Humanities Curriculum (Ministry of Education, 2000). It is likely that some participants may not have completed high-school, or even attended school on a regular basis.

Despite lacking knowledge of where rights come from, participants were generally able to define what they believed the term ‘right’ refers to. In comparison to 13-15 year olds, 16-17 year olds were more likely to define rights as an “entitlement/privilege.” This finding demonstrates consistency with a study by Ruck et al. (1998) in which 16 year old participants were most likely to also describe rights in terms of a “privilege/entitlement” in contrast to younger participants. Furthermore, Ruck et al. (1998) also discovered that participants aged 10, 12, 14 and 16 were most likely to describe rights as “to do/want” (e.g., “it’s something that you want to do,” “you’re allowed to do”). Likewise, in the present study, defining rights in terms of something “you’re allowed to do” emerged as the most common response for both older and younger youth.

It is however interesting to note, that while some youth defined rights as an “entitlement,” three older youth (6.0%) explained rights as a “responsibility.” Thus, for a very small percentage of youth it appears that they may put the onus on themselves to ensure that their rights are guaranteed, as opposed to expecting rights to always be provided. Such a finding is noteworthy when considering that the *CRC* makes no mention of responsibilities for youth, but rather places the responsibility on adults to make sure that young people are in fact protected. However, young people are often confronted with the message that rights and responsibilities are intertwined. For example, the Grade 11 and 12 Social Studies and Humanities Curriculum discusses the importance of rights and responsibilities for employees and employers in the workplace (Ministry of Education, 2000). Consequently, it is not surprising that the theme of “responsibility” emerged, albeit by only a few youth.

Almost three-quarters of the participants (72.0%; n=36) seemed to understand that their rights could not be taken away. However, the response that rights are revocable was not simply provided by younger youth, but also by older participants. Again, this finding is consistent with the Ruck et al. (1998) study which found that even older youth (16 years) believed that their rights could be revoked or restricted by those in authority, and especially when their rights conflicted with authority figures. With respect to the present study, 44.0% (n=22) of youth reported instances where their rights were violated by the police. Even while rights cannot be revoked in theory, the experiences of young people can certainly send a different message. For example, it is possible that negative encounters with police officers who are ultimately in a position of authority contributed to these young people feeling as though their rights could be taken away.

Slightly over one third of the total sample of youth (34.0%; n=17) indicated that their rights had been violated while involved in the justice system. There was also a perception among many participants that they were powerless to stand up against violations, mainly because no one would listen to them. Nevertheless, despite this feeling, most of the young people in the present study characterized themselves as citizens and bearers of rights. This characterization emerged from youth discussing not only the significance of rights knowledge for young people, but also the importance of being provided with rights. Furthermore, the importance of decision making power became apparent during responses to certain questions. For instance, nearly two-thirds (65.2%; n=15) of the 22 youth who plea bargained, indicated that they were given the choice to refuse the bargain, and of the 47 respondents who were asked the vignette questions, nearly all (97.9%; n=46) indicated that “Tommy’s” lawyer should explain the consequences of pleading guilty, as opposed to forcing him into such a decision. In

relation to their own case, nearly all youth (88.0%; n=44) also indicated that they had been provided with opportunities to make their own decisions about their case, rather than being forced into a particular decision.

*Understanding of Legal Rights in the Abstract and in Practice*

When thinking about rights and legal procedures in terms of a hypothetical vignette, participants generally demonstrated a moderate degree of understanding. Almost all (91.5%; n=43) of the 47 youth asked were able to identify that at least one of “Tommy’s” rights had been violated. As previously noted, over one-third (34.0%, n=17) of the total sample of respondents also mentioned that their rights had been violated in their own specific cases. It therefore appears as though most youth do recognize instances when their rights are not respected. Recognition of rights violations however, does not necessarily translate into the ability of young people to protect their own rights. For example, the most common rights violation identified in the hypothetical vignette was that “Tommy” was not provided with the right to a phone call. Yet some youth nevertheless mentioned that they were personally denied this right and did not feel as though they could insist on making a phone call when they wanted to.

A further discrepancy in the understanding that young people had of rights in the abstract, compared to their understanding in practice became evident when they were asked if “Tommy” should have the consequences of pleading guilty explained to him by his lawyer. In response to this question all but one of the 47 youth asked, responded by saying that pleading guilty should be explained to “Tommy.” However, nine (40.9%) of the 22 youth who personally accepted a plea bargain, and pled guilty to their charges, were unable to define what a plea bargain was. Thus, while youth seemed to understand

that pleading guilty has consequences and should be clearly explained, this was not always the case in practice.

Finally, almost two-thirds (65.9%; n=31) of participants stated that young people should not always follow the advice of their lawyer. Again, this assertion provides evidence that young people are aware of the importance of making their own independent decisions, and standing up for themselves, even when facing opposition from an authority figure. Interestingly, a higher percentage of 13-15 year olds reported that youth should always follow the advice of their lawyer, due to their expertise with the legal system. Although the question asked was not identical in nature, this finding is similar to one found in a study by Viljoen et al. (2005), where youth were asked what they would do if they had a disagreement with their attorney. Results indicated that compliant responses were more likely to be provided by younger participants who stated that if in a disagreement they would go along with what their lawyer suggested.

Considering the significance of legal representation for young people, it is worth noting how respondents described their understanding of the right to a lawyer. Most of the young people asked defined the job of their lawyer in terms of “defend and represent.” This category of response is similar to a finding in a study by Peterson-Badali et al. (1999) where youth indicated that during trial, the job of a lawyer is to “defend the accused” and “attempt to minimize negative outcomes” (p.461). When asked how their lawyer should treat them in the present study, the most common response (72.0%; n=36) provided by youth was that they should be treated with “respect.” Many youth indicated that their lawyers were respectful and that they had or would feel comfortable expressing opinions or concerns with their lawyer.

The idea of being respected by one's lawyer is important to consider, especially in light of findings by Peterson-Badali et al. (2007). Specifically, this study concluded that young people's ratings of participation, objectivity, trustworthiness and treatment with dignity and respect are closely related to their satisfaction with their lawyer. Likewise, for youth in this current study, achieving open communication and a sense of respect with their lawyer may also contribute to their satisfaction. Furthermore, the fact that youth in the current study indicated the importance of being treated well by their lawyer reinforces the idea that youth construct themselves as citizens, deserving of respect.

### *Plea Bargaining*

Little research has been conducted on youths' participation and understanding of their rights in the context of plea bargaining (Bloomenfeld, 2005). Over half of the respondents were unable to define a plea bargain, despite the fact that some of these youth indicated having been involved in one. This is noteworthy considering that approximately 90% of cases are resolved through plea bargaining (Verdun-Jones & Tijerino, 2004). Even when asked about the important concepts of pleading guilty and not guilty, some participants expressed confusion and misinterpretations of the meanings of these terms. In terms of defining a plea of guilty, the most popular response provided was "admitting to the crime." This finding is similar to one by Peterson-Badali & Abromovitch (1992) in which the majority of participants stated that pleading guilty involves an "admission of wrongdoing or an acknowledgment that the charge is true" (p.151).

While one participant was unable to define a plea of not guilty, most youth explained that pleading not guilty means that "you are innocent." Again this finding is consistent with previous research in which youth possessed a similar misconception of the not guilty plea, defining it as a denial of guilt or claim of innocence (Peterson-Badali &

Abramovitch, 1992; Peterson-Badali et al., 1997). According to Peterson-Badali et al. (1997) the confusion that young people express over the not guilty plea may be due to criminal cases portrayed on television in which the accused does claim to be innocent of the crime, and is later released when his or her lawyer discovers the real culprit. In addition to providing a clear explanation of plea bargaining, lawyers should also ensure that all of their young clients possess an accurate understanding of what it means to plead both guilty and not guilty.

Almost half (44.0%; n=22) of the respondents indicated being involved in a plea bargain in their own case. Younger respondents (13-15 years) were more likely than their older peers (16-17 years) to not know what influenced them to accept the bargain. This may be indicative of the fact that younger youth may be less likely to fully understand the meaning and/or the implications this legal procedure.

The most influential factor in determining why youth accepted a plea bargain was the element of time (54.5%; n=12). Many youth explained that they had to return to school and/or work, and therefore wanted to speed up the time spent at the courthouse. While the factor of time is important to youth, the same holds true for adults. Ericson and Bananek (1982) reported a similar case in their study where an accused adult explained that although he believed that he was falsely accused, he pled guilty to save time and to get the process “over with.” Since the element of time seems to be influential, it would be worthwhile to consider how the process of waiting could be less of a burden to participants in the justice system. While doing so would undoubtedly be difficult, perhaps ensuring that the consequences of accepting a plea bargain are clearly explained to young people and that they have all the necessary information to make informed choices would be an initial step.



Considering the significance of time, it would be important to ensure that spending additional time involved in the justice process is not perceived as a penalty for pleading not guilty. This would be especially important for individuals who plead guilty to save time, despite wanting to plead not guilty. For a number of youth, however, the desire to save time and avoid the possibility of a lengthy trial meant pleading guilty to charges of which they did not necessarily believe they were guilty. Such a finding is imperative to acknowledge, especially when dealing with young people. After all, research has found that even adults may be forced to plead guilty by lawyers who convince their clients of the “strategic wisdom” of such a decision, despite the fact that their client may not be personally convinced (Ericson & Baranek, 1982, p.159). For young people who may feel especially powerless to disagree with adult professionals, the likelihood of them being persuaded to plead guilty may be even greater than an adult.

It is important to note that the majority of the 22 youth who did plea bargain, also indicated that they were given the choice to refuse the bargain if they wished (68.2%; n=15). In contrast, some other youth (21.7%; n=5) felt as though they could not refuse the plea bargain due to the amount of evidence against them. This finding is consistent with previous research in which strength of evidence influenced young people to report that they would accept a plea bargain (Peterson-Badali & Abramovitch, 1993; Viljoen et al., 2005).

### *Perceptions of Power*

As previously mentioned, youth in the present study reported that while some of their rights had not been respected, they were not in a position to stand up for themselves. Consequently, the lack of power experienced by participants vis-à-vis adult justice officials impeded their ability to exercise their rights and meaningfully participate in the

justice system. The implications of adult power on young people are further explained by Scraton (1997) who writes, “Adult power...it is a power readily and systematically abused. It is a dangerous and debilitating power, capable of stunting the personal development and potential of even the most resilient children” (p. 186).

Whether it was due to intimidation, fear, or past negative experiences with police officers or other criminal justice officials, nearly three-quarters (74.5%; n=35) of the 47 youth asked, indicated that they had not, or would not talk to police. Furthermore, over half of the entire sample of participants (54.0%; n=27) expressed that justice officials did not do an adequate job of clearly explaining their rights to them. Consequently, even though these youth may be aware that they have certain rights, such as the right to silence and to a lawyer, they may not fully understand their rights or feel comfortable asserting them. Likewise, even if they wanted to, youth may not know how to effectively exercise their rights in a self-protective manner.

Although more than three-quarters of the 47 youth asked indicated that they would feel comfortable talking to their lawyers (78.7%; n=37), the same did not hold true for talking to the judge (51.1%; n=24). In fact, young people (10.6%; n=5) expressed that even if they had something to say, they would likely just tell their lawyer, who would tell the judge. Consequently, in the context of the courtroom, youth may again feel unable to assert their rights, or to even ask questions. The fact that many youth felt uncomfortable talking to justice professionals is problematic, considering that Article 12 of the *CRC* states that young people should have the opportunity to be heard in any judicial or administrative proceedings that affect them. In fact, not only is the right to be heard and participate an important political right, but it is one of the most fundamental principles underlying the *CRC* (Standing Senate Committee on Human Rights, 2007). In ensuring

that the *YCJA* is effectively protecting the rights of youth, it is therefore critical that the right to participate be guaranteed.

*Implications for Theory, Research and Policy*

Within the Canadian justice system the treatment and management of youth offenders has paralleled the evolving perceptions, policies and practices with regards to children and their rights. While historical constructions of youth offenders have included views such as them being ‘objects of parental authority’ and ‘vulnerable,’ the *YCJA* also constructs youth as individuals with distinct human rights (Denov, 2007). Yet as demonstrated in the present study, there appears to be a discrepancy between the experiences of young people and how they are socially constructed.

Although participants understood the importance of rights, and constructed themselves as bearers of rights, many youth across all age groups felt ill-equipped and powerless to invoke their rights. This issue is further compounded by the fact that they were accused youth within an adult-led criminal justice system. Therefore despite being aware of certain rights and having a general understanding of legal concepts and terminology, the inability of young people to assert their rights was influenced by the lack of power they felt vis-à-vis adults, and specifically criminal justice professionals. As further explained by Peterson-Badali (1998), “...young people’s knowledge of their rights and of the workings of the youth justice system may be necessary but it is not sufficient to produce choices that are self-protecting in the long run” (p.463).

The findings of this study call attention to the importance of ensuring that young people feel comfortable within the justice system, and that they are able to express opinions and concerns with criminal justice officials, such as defence counsel. This idea is emphasized within a committee report on the *CRC* (Committee on the Rights of the

Child, 2007) which stresses that the right of youth to express their views freely in all matters affecting them should be respected and implemented throughout every stage of the juvenile justice process. One means to achieve this is to emphasize the importance of training for all professionals involved in the administration of youth justice. While participants in the present study indicated that they did not always feel comfortable voicing their opinions or concerns with justice officials, they should nevertheless be encouraged to do so. Considering that speaking to justice professionals may be difficult or intimidating for anyone involved in the criminal process, designating an independent ombudsperson to each court for youth to express their opinions and concerns to could also act as a possible solution.

In order to assist youth in conflict with the law to effectively invoke their rights, it is important that they are respected by criminal justice officials. According to Article 40 of the *CRC*, children in conflict with the law have the right to be treated in a manner consistent with the promotion of their sense of dignity and worth, which also reinforces their respect for the human rights and fundamental freedoms of others. As stated in the Committee Report (2007), this right to dignity and worth must be respected throughout the entire process of dealing with the child, from first contact with law enforcement agencies to implementation of measures for dealing with the child. In fact under the *CRC*, State Parties are required to develop and implement a comprehensive juvenile justice policy and are additionally encouraged to establish a child-centered justice system (Standing Senate Committee on Human Rights, 2007). Once again, in order for the rights of youth offenders to be protected, it is essential that justice professionals be trained on issues of child development and how to effectively communicate with young people and ensure that they comprehend the implications of each option. After all, if key actors in

juvenile justice, such as police officers, prosecutors and probation officers, do not respect and protect the rights of young people, it is difficult to expect that with such poor examples that youth will respect the rights and fundamental freedoms of others (Committee on the Rights of the Child, 2007).

When young people are involved in the justice system, the inclusion of parents may assist in producing effective relationships between justice professionals and youth. While it is important to note that parental involvement may not necessarily be beneficial in all cases (and could potentially produce negative implications), it is possible that having a parent or guardian present may help a young person feel more comfortable asking questions and participating within the justice system. According to Section (3d)(iv) of the *YCJA*, “parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.” As explained by Varma (2007), the *YCJA* emphasizes the parental role by involving parents and families in the design and implementation of sanctions for or consequences of criminal behaviour. Likewise, considering that the *YCJA* places an emphasis on extrajudicial proceedings, having parents, youth and youth justice professionals come together outside of the courtroom to decide on appropriate resolutions for the young person and for victims of crime would be ideal (Peterson-Badali & Broeking, 2004). Furthermore, parents are encouraged to be supportive of their children in the youth court process. While parental involvement may not necessarily influence the outcome of a case (Peterson-Badali & Broeking, 2004; Varma, 2007), it may assist in helping youth feel more comfortable within the justice system.

A further implication of this study which echoes Peterson-Badali et al.’s (1999) sentiment is that young people need to be better educated about the criminal justice

system *before* they come into contact with it. While participants demonstrated some understanding of legal concepts, their knowledge was not entirely accurate or complete. Considering that decisions made during initial police contact can have serious and lasting implications (Peterson-Badali, 1992), it is essential that young people are aware of their legal rights, and recognize the importance of legal representation. On a similar note, considering that over half of the participants were unable to provide a definition of plea bargaining (even though some did in fact plea bargain) it is critical that youth be educated on this legal procedure. This is especially important in light of both the frequency of plea bargaining, and because young people may feel pressured to accept a plea bargain, without even being guilty, or being made aware of the consequences.

The importance of an accused individual understanding a plea of guilty is emphasized within a Committee Report published by the *Ontario Ministry of the Attorney General on Charge Screening, Disclosure, and Resolution Discussions* (Ontario Ministry of the Attorney General, 1993). As stated in the report it is, "...central to the integrity of a resolution of a criminal prosecution agreed upon by the Crown and the defence that it be fully understood and agreed to by the accused person" (p.318). As a result, the trial judge must conduct an inquiry in open court and on the record to determine the accused person's comprehension of the proposed plea of guilty. The primary purpose of the inquiry is to ensure that the "...crucial requisites of comprehension and voluntariness on the part of the accused are present" (p. 320). Specifically, when a plea of guilty is entered, the trial judge should question the accused to ensure:

- a) that they appreciate the nature and the consequences of a plea of guilty; b) that the plea is voluntarily made; and c) that they understand that an agreement between the Crown prosecutor and defence counsel does not bind in court (p.317).

Thus, in any case where a plea of guilty is offered, a plea inquiry should occur. This would be especially important for young people who may be less likely to fully understand such a decision.

Findings of the present study which reveal gaps in the understanding that young people have of their rights and legal knowledge can also assist educators and curriculum planners in determining areas which require further attention. Considering the importance of being knowledgeable about the legal system and rights, it is worthwhile for educators to teach young people about these issues. After all, young people may interact with the legal system in a number of ways including as an accused, a victim, or a witness of crime and these encounters can produce profound effects on their lives (Peterson-Badali & Abramovitch, 1992). As explained by Peterson-Badali & Koegl (1998), possessing reasonable levels of knowledge about the youth justice system is a benefit for both young people and society as a whole. Specifically, such knowledge will not only function to prevent crime, but it will also assist in creating more meaningful, and perhaps more reasonable perceptions of the criminal justice system. Considering that young people are deemed capable of participating in the legal system, it is vital that they are provided with the appropriate education to ensure their meaningful participation. On a similar note, ensuring that youth receive accurate information is vital, as adult myths such as, “nothing happens to youth offenders” and “young people get off too easily,” may further perpetuate the misconceptions that youth have of the justice system. In addition, it is equally as important to implement effective training programs for legal professionals to assist them in appropriately dealing with, and respecting youth offenders.

Even outside of the justice system, increased focus can be directed towards protecting the rights of all youth, including those in conflict with the law. This is

important as Canada has been criticized for being one of the few countries in the developed world to not have a permanently funded mechanism to monitor the protection of children's rights (Standing Senate Committee on Human Rights, 2007). As a result the Senate Human Rights Committee has recognized the importance of establishing a Children's Commissioner. This commissioner would be appointed by Parliament and would be provided with real legal powers in order to effectively monitor the implementation and protection of children's rights. Furthermore, the primary purpose of the Children's Commissioner should be responsibility for the *CRC* and ensuring that the government remains accountable to all children and citizens (Standing Senate Committee on Human Rights, 2007). Thus, implementing this committee recommendation may again work to protect all children, and to ensure that the principles and provisions of the *CRC* are being adhered to.

In countries around the world, the growing significance of legal protections for young people has also received recognition, and efforts to reform the treatment of young offenders within justice systems are being implemented (Monahan, 2003). For instance, in Lithuania, a social marketing campaign has been created to educate citizens about the sources of youth crime, and to alter negative stereotypes about youth offenders. In 2000, Palestine sponsored a conference entitled, "*Towards a Unified Juvenile Justice System Guaranteeing the Rights of the Child*," which resulted in the Palestinian Ministry of Social Action taking on a more significant role in the youth justice system. Finally, in Brazil, detention is used for shorter periods of time, and far less frequently than in the past, and in the Caribbean efforts to discover low-cost alternatives to imprisonment are underway (Monahan, 2003).



Within the Canadian youth justice system it is essential that such positive reforms are implemented and as well, that young people have the ability to effectively understand and exercise their legal rights. This is especially important as young people 12 years of age and older are considered capable of meaningful participation in the justice system (Peterson-Badali, 1996). In instances where rights violations do occur young people should be made aware of the safeguards that do exist. For example, Section 24 of the Charter states:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Thus, young people should be made aware that there are protections available to them, in the event that they do experience a rights violation. Furthermore, considering that youth do have the right to obtain legal counsel, they should know that there is a toll-free number available if they wish to contact a Legal Aid duty counsel lawyer for free legal advice (Community Legal Education Ontario, 2002).

Additional resources also exist to ensure that the legal rights of youth are properly accounted for. *Justice for Children and Youth* is a non-profit legal clinic which provides select legal representation to low-income children and youth in the Toronto area (Justice for Children and Youth, 2005). Specifically, they specialize in the protection of rights for youth in conflict with the legal system, education, social services or mental health

systems, and are most concerned with cases in which the rights of young people have been ignored. This non-governmental organization has intervened in a number of court cases, such as playing a role in the representation of young people who were ticketed under the *Safe Streets Act* for squeegee cleaning and panhandling. One of the arguments presented in this case was that the *Safe Streets Act* infringes on an individual's *Charter* rights to life, liberty and security of the person (Section 7) since it prevents individuals from making money (*R.v.Banks*, Justice for Children and Youth, 2005).

Overall the present study extends existing literature by focusing on rights found in the *YCJA* and the *CRC*, and by examining how accused youth understand their rights during the process of plea bargaining. In addition, while much of research in this area is primarily quantitative in nature (e.g., Peterson-Badali, 1996; Viljoen et al., 2005), the present study provided a voice to young people directly in conflict with the law. Doing so provided insight into how participants constructed themselves both as young people and as accused individuals, and how they understand their experiences within the justice system. Finally, while the results cannot necessarily be generalized, the present study provided evidence about how youth are being treated within the justice system, as well as an indication as to whether the *YCJA* is effectively protecting the rights of youth.

#### *Directions for Future Research*

In the present study 50 young offenders between the ages of 13-17 who received either probation or an extrajudicial sanction were recruited from the Finch Courthouse. Future studies may wish to include a larger sample and to additionally recruit youth from a number of different courthouses. However, it should be reinforced that the purpose of this study was to explore the views of youth and not to make statistical conclusions about this population.

The fact that just under half of the sample (48.0%; n=24) were first time offenders may relate to why participants did not demonstrate more of an enhanced understanding of their rights and legal procedures. Furthermore, a lack of experience may also relate to youth feeling as though they could not confidently exercise their rights. Future studies may therefore wish to focus more on youth who have committed multiple offences in order to see whether offence history is related to one's experiences in the justice system. It should however be noted that youth who reported being first time offenders may have actually had previous police contact through extrajudicial measures.

While 28.0% (n=14) of the sample was between the ages of 13-15, 72.0% (n=36) were between the ages of 16-17. It would therefore be important for future studies to include a greater number of 13-15 year olds in order to more fully account for the experiences of youth at the young end of the *YCJA* spectrum. Even despite the difficulties associated with gaining access to younger youth, it is important that literature is not solely shaped by the experiences of older youth.

While the cognitive ability of participants was not assessed in the present study, future studies may wish to take this factor into account in order determine if it has any bearing on the how young people understand their rights. However, many criminal justice professionals, such as police and lawyers, would not necessarily be aware of an existing impairment at first contact with a young person.

For the purposes of this present study, youth who received an extrajudicial sanction or were sentenced to probation were eligible to participate, regardless of whether or not they plea bargained. Yet in order to examine this legal procedure in further detail, future research may wish to focus on only those youth who did in fact plea bargain. While this study provided some insight into plea bargaining for young people, it is an area

worthy of future research, particularly considering the lack of attention that it has received. Furthermore, given the theoretical, legal and policy changes in criminal sentencing, it is essential to gain an understanding of plea bargaining processes and decisions, as well as to examine the effects of these broader shifts in penalty.

The goal of the present study was to examine how youth understood their rights from their perspective, and how the element of power impacts the ability of young people to exercise their rights. Future studies may wish to include the voices of other legal professionals such as lawyers, judges and police officers. This would facilitate for a more in-depth understanding of how these adults view youth offenders, the extent to which they believe that youth understand their rights and can exercise their rights, and also an indication as to whether they feel that they are in fact explaining rights to a youth in clear manner. Doing so, would provide insight into whether the reported experiences and understanding of youth are consistent with what legal professionals report.

## Conclusion

In order for young people to meaningfully participate in the justice system, it is imperative that they have an understanding of both their rights, as well the legal processes that impact them. This issue is particularly significant considering that Canada's current *YCJA* constructs youth as rights-bearing citizens and has been declared an improvement in protecting the rights of children (Denov, 2007).

Within the theoretical framework of social constructionism, the present study examined the perspectives of youth offenders, in order to gain an understanding of how they understand rights and legal procedures when involved in the justice system, and specifically during plea bargaining. Furthermore, the present study considered how perceived relative power impacts on the ability of young people to understand and exercise their rights.

Fifty youth between the ages of 13-17 who received an extrajudicial sanction or were sentenced to probation were recruited from the Finch Courthouse in Toronto, Ontario to participate in a semi-structured interview. Results indicate that while age played a role in the understanding that youth had of rights and legal procedures, it was not consistent. Furthermore, while participants seemed to have some understanding of their rights and legal procedures, youth across all age groups felt ill-equipped to invoke their rights in an adult led criminal justice system. Thus, although youth recognized that having knowledge of their rights is essential, it was not sufficient to ensure that they confidently invoked their rights and stood up against rights violations because many felt that they were lacking power as youth and accused in an adult-led criminal justice system.

Overall the present study contributes to the literature by addressing rights found in the *CRC*, and by also examining how youth understand their rights during the process of

plea bargaining. Furthermore, while past research has often constructed youth as understanding legal rights and procedures based on age (e.g., Grisso et al., 2003), the present study additionally conceptualized youth as a social group who lack power vis-à-vis adults. Finally, while past research has often ignored the voices of accused youth, the present study provided an opportunity for youth to discuss their experiences within the justice system and within the context of their rights.

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Appendix A - Flyer

# Youth Rights Study

## WE WANT TO HEAR ABOUT YOUR EXPERIENCES

What were your experiences during contact with police, your lawyer and the Crown Attorney?

## WHO CAN PARTICIPATE?

Young people, ages 12-17, found guilty of a charge(s)

## WHAT IS INVOLVED?

A 30 minute voluntary & confidential interview



**\$10 (AFTER COMPLETED INTERVIEW)**

## PLEASE SEE:

Christine Goodwin from Brock University outside of Courtroom #207 (3<sup>rd</sup> Floor)

10am-3pm Monday, Thursday & Friday.

Christine will be wearing an orange name tag saying: YOUTH STUDY. You can also contact Christine at 647-407-6774

\* The Ministry of Child and Youth Services is assisting in advertising the study only, but your interview is completely confidential\*



Appendix B - Brock University Ethics Approval

FROM: Michelle McGinn, Chair  
Research Ethics Board (REB)

TO: Voula Marinos, Child and Youth Studies  
Christine GOODWIN

FILE: 06-366 GOODWIN

TITLE: Understanding How Young People Experience Their Rights in Plea  
Negotiations

The Brock University Research Ethics Board has reviewed the above research proposal.

**DECISION: Accepted as Clarified.**

This project has received ethics clearance for the period of August 22, 2007 to September 30, 2008 subject to full REB ratification at the Research Ethics Board's next scheduled meeting. The clearance period may be extended upon request. ***The study may now proceed.***

Please note that the Research Ethics Board (REB) requires that you adhere to the protocol as last reviewed and cleared by the REB. During the course of research no deviations from, or changes to, the protocol, recruitment, or consent form may be initiated without prior written clearance from the REB. The Board must provide clearance for any modifications before they can be implemented. If you wish to modify your research project, please refer to <http://www.brocku.ca/researchservices/forms> to complete the appropriate form **Revision or Modification to an Ongoing Application**.

Adverse or unexpected events must be reported to the REB as soon as possible with an indication of how these events affect, in the view of the Principal Investigator, the safety of the participants and the continuation of the protocol.

If research participants are in the care of a health facility, at a school, or other institution or community organization, it is the responsibility of the Principal Investigator to ensure that the ethical guidelines and clearance of those facilities or institutions are obtained and filed with the REB prior to the initiation of any research protocols.

The Tri-Council Policy Statement requires that ongoing research be monitored. A Final Report is required for all projects upon completion of the project. Researchers with projects lasting more than one year are required to submit a Continuing Review Report annually. The Office of Research Services will contact you when this form ***Continuing Review/Final Report*** is required.

Please quote your REB file number on all future correspondence.

MM/bb

Brenda Brewster, Research Ethics Assistant  
Office of Research Ethics, MC D250A  
Brock University  
Office of Research Services  
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St. Catharines, Ontario, Canada L2S 3A1  
phone: (905)688-5550, ext. 3035 fax: (905)688-0748  
email: reb@brocku.ca  
<http://www.brocku.ca/researchservices/ethics/humanethics/>

Appendix C - Informed Consent Form – Parent/Guardian

**Date:** September 2007

**Research Project Title:** An Examination of How Youth Understand their Rights During the Criminal Process

**Principal Investigator:** Christine Goodwin, Department of Child and Youth Studies  
Brock University, cg02no@brocku.ca

**Faculty Supervisor:** Professor Voula Marinos, Department of Child and Youth Studies  
Brock University, 905 - 688-5550 ext. 3386,  
vmarinos@brocku.ca

**Purpose of Study:**

Your child has been invited to participate in a study that involves research. The purpose of this study is to examine how youth understand their rights during the criminal process

**What is Involved?**

As a participant, your child will be asked to participate in one semi-structured interview, containing open-ended questions. The entire interview will be tape recorded, and will be approximately 30 minutes in length. Once your child and the researcher meet outside of courtroom #207 (3<sup>rd</sup> Floor) at the Finch Courthouse, they will then proceed to a private room to conduct the interview. If your child wishes, you may sit with them while they complete the interview. Your child will receive \$10 for participating in the interview.

**Potential Benefits and Risks**

Possible benefits of participation include the opportunity for your child to openly discuss how they have understood their rights while involved in the justice system. Further, they will have the opportunity to participate in research and consequently increase awareness on the experiences faced by young people found guilty of a criminal offence.

There are minimal psychological risks associated with participating in this study. As a result of your child talking about their experiences, negative feelings or emotions may arise, causing emotional distress. Additionally, feelings of being demeaned, embarrassed, worried or upset may also occur. However, the researcher will do her utmost to ensure that risks do not occur by focusing on how rights have been experienced, rather than on the crime which was committed

**Confidentiality:**

All information provided during the course of this study will be kept confidential at all times. However, in the event that information is disclosed which indicates potential harm to your child or others, the police will be notified. Anonymity cannot be guaranteed since your child will be participating in a face to face interview. Data collected during this study will be stored in a locked storage cabinet in Professor Marinos office at Brock University, and therefore only she and the researcher will have access to the data. All information will be stored until 2013, after which time all paper documents will be shredded and audio tapes will be destroyed.

It is important to remember that participation in this study will not have any impact on the disposition of your child's charges. Further, as a researcher I will not be providing advice or counsel on legal matters.

Participation in this study is voluntary. Your child may refuse to answer any questions or participate in any component of the study. Further, your child may decide to withdraw from this study at any time and may do so without any penalty. In the event that your child does withdraw from the study, all of their data will be destroyed.

### Publication of Results:

Results of this study may be published in professional journals and presented at conferences. Your child's name will not appear in any report resulting from this study; however, with your permission anonymous quotes may be used.

Upon completion of this study, results will be made available. If you wish to receive a copy of the results, please circle YES at the bottom of this form and provide your email address. Alternatively, if you wish to receive feedback at a later date, you may contact the principle investigator via email.

## Contact Information and Ethics Clearance

If you have any questions about this study or require further information, please contact the Principal Investigator or the Faculty Supervisor using the contact information provided above. This study has been reviewed and received ethics clearance through the Research Ethics Board at Brock University (06-366). If you have any comments or concerns about your child's rights as a research participant, please contact the Research Ethics Office at (905) 688-5550 Ext. 3035, [reb@brocku.ca](mailto:reb@brocku.ca).

Thank you for your assistance in this project. Please keep a copy of this form for your records.

**I give permission for my child to participate in this study described above. I have made this decision based on the information I have read in the Information-Consent Letter. I have had the opportunity to receive any additional details I wanted about the study and understand that I may ask questions in the future. I understand that my child may withdraw this consent at any time.**

Upon completion of this study do you wish to receive a copy of the findings? (Circle your response):                      YES                      NO

If you answered YES, please provide your email address:

---

Name of Parent/Guardian: \_\_\_\_\_

Signature of Parent/Guardian: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix D – Assent Form - Youth

**Date:** September 2007  
**Title:** An Examination of How Youth Understand their Rights  
During the Criminal Process  
**Principal Researcher:** Christine Goodwin, Department of Child and Youth Studies  
Brock University, cg02no@brocku.ca  
**Faculty Supervisor:** Professor Voula Marinos, Department of Child and Youth  
Studies  
Brock University, 905 - 688-5550 ext. 3386,  
vmarinos@brocku.ca

**What is the Study About?**

I am asking you to participate in a study which will examine how youth who have been found guilty of a crime understand their rights when involved in the criminal process.

**What will you have to do?**

You will be asked to answer a set of interview questions. The interview will be tape recorded, and will take 30 minutes. The researcher will meet you outside of courtroom #207 (3<sup>rd</sup> Floor) at the Finch Courthouse, and then will take you to another room, to ask you some questions. If you would like, your parent/guardian can sit with you while you complete the interview. After the interview, you will be given \$10.

**How will you Benefit?**

You will be able to openly talk to the researcher about how you have understood your rights during your involvement with the justice system.

**What are the Risks?**

You might feel worried or embarrassed when participating in the interview. However, the researcher will focus on how you have understood your rights, rather than on the crime which was committed.

**Confidentiality:**

Everything that you tell the researcher is confidential, meaning that no one else will know what you say during the interview. However, if you tell the researcher clear information about harming yourself, or another person, the police will be told. Anonymity cannot be guaranteed (meaning that the researcher will know who you are) since you will be participating in an interview. The information that you provide will be kept in a locked cabinet at Brock University, to ensure that no one other than the researcher and her supervisor have access to anything that you say.

Participation in the interview will not change your charges. The researcher will not be giving you any advice on legal matters. Participation in this study is your choice. If you do not want to answer a question, you do not have to. Also, you may decide to leave the interview at any time, without anyone getting angry or upset. If you do leave the interview, all of the information that you told the researcher will be destroyed.

Information from this study may be published in research journals and presented at conferences. Your name will not be written in any report about this study; however, if you agree, the researcher may use anonymous quotes (meaning that something that you said might be written down, but your name will not appear) that you provide during the interview.

If you would like to know what the researcher found out during this study, please circle YES at the bottom of this form and provide your email address. If you wish to see this information at a later date, you may email the researcher.

## **Contact Information and Ethics Clearance**

If you have any questions about this study, feel free to ask the researcher at any time. You may also contact her, or her supervisor, Voula Marinou, using the contact information provided at the top of this form.

This study has been received ethics clearance through the Research Ethics Board at Brock University (File #06-366). If you have any questions about your rights as a research participant, please contact the Research Ethics Office at (905) 688-5550 Ext. 3035, reb@brocku.ca.

Thank you for your help. Please keep a copy of this form for your records.

**I agree to participate in this study described above. I would like to participate based on the information I have read in this Letter. I have had a chance to ask any questions, and I know that I can ask more questions at any time. I understand that I can decide not to participate, or answer any questions at any time.**

Once this study is complete do you wish to receive a copy of the findings? (Circle your response):

If you answered YES, please provide your email address:

---

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix E – Consent Form – Youth

**Date:** September 2007  
**Title:** An Examination of How Youth Understand their Rights During the Criminal Process  
**Principal Researcher:** Christine Goodwin, Department of Child and Youth Studies  
 Brock University, cg02no@brocku.ca  
**Faculty Supervisor:** Professor Voula Marinos, Department of Child and Youth Studies  
 Brock University, 905 - 688-5550 ext. 3386,  
 vmarinos@brocku.ca

**What is the Study About?**

I am asking you to participate in a study which will examine how youth who have been found guilty of a crime understand their rights when involved in the criminal process.

**What will you have to do?**

You will be asked to answer a set of interview questions. The interview will be tape recorded, and will take 30 minutes. The researcher will meet you outside of courtroom #207 (3<sup>rd</sup> Floor) at the Finch Courthouse, and then will take you to another room, to ask you some questions. If you would like, your parent/guardian can sit with you while you complete the interview. After the interview, you will be given \$10.

**How will you Benefit?**

You will be able to openly talk to the researcher about how you have understood your rights during your involvement with the justice system.

**What are the Risks?**

You might feel worried or embarrassed when participating in the interview. However, the researcher will focus on how you have understood your rights, rather than on the crime which was committed.

**Confidentiality:**

Everything that you tell the researcher is confidential, meaning that no one else will know what you say during the interview. However, if you tell the researcher clear information about harming yourself, or another person, the police will be told. Anonymity cannot be guaranteed (meaning that the researcher will know who you are) since you will be participating in an interview. The information that you provide will be kept in a locked cabinet at Brock University, to ensure that no one other than the researcher and her supervisor have access to anything that you say.

Participation in the interview will not change your charges. The researcher will not be giving you any advice on legal matters. Participation in this study is your choice. If you do not want to answer a question, you do not have to. Also, you may decide to leave the interview at any time, without anyone getting angry or upset. If you do leave the interview, all of the information that you told the researcher will be destroyed.





Appendix F - Letter of Invitation

**Title of Study:** An Examination of How Youth Understand their Rights During the Criminal Process

**Principal Investigator:** Christine Goodwin, Masters Student, Department of Child and Youth Studies, Brock University

**Faculty Supervisor:** Dr. Voula Marinos, Professor, Department of Child and Youth Studies, Brock University

I, Christine Goodwin, a Masters Student from the Department of Child and Youth Studies at Brock University, invite you to participate in a research project entitled: *An Examination of How Youth Understand their Rights During the Criminal Process*

The purpose of this study is to examine how youth who have been found guilty of a criminal offence, experience their due process rights when involved in the criminal process, and where plea bargaining has occurred.

As a participant you will be asked to take part in an interview at the Finch Courthouse. The expected duration of your interview will be 30 minutes. All of the information that you provide during the course of the interview will be kept confidential, meaning that the researcher will not inform anyone else of what you tell her during the interview. If you wish, your parent/guardian may sit with you while you complete the interview. In addition, if you wish to withdraw from the study at any time, you may do so without penalty. Upon completion of the interview, you will receive \$10.

This research will be beneficial as it allow you an opportunity to communicate your attitudes and experiences with your rights and with plea bargaining. Thus, a better understanding of how youth in general are being treated within the justice system will be promoted. Additionally, this study will contribute to sentencing and penal theories by examining the attitudes and experiences of youth involved with the criminal justice system and plea bargaining. Given the changes in criminal sentencing, it is essential to gain an understanding of plea bargaining processes.

This is a single-site project.

If you have any pertinent questions about your rights as a research participant, please contact the Brock University Research Ethics Officer (905 688-5550 ext 3035, [reb@brocku.ca](mailto:reb@brocku.ca))

If you have any questions, please feel free to contact me.

Thank you,

Christine Goodwin  
Masters Student  
Brock University  
cg02no@brocku.ca

Professor Voula Marinos  
Faculty Supervisor  
Brock University  
vmarinos@brocku.ca  
906-688-5550,

**This study has been reviewed and received ethics clearance through Brock University's Research Ethics Board (file # 06-366]**

Appendix G - Interview Questions

Age: \_\_\_\_\_

Sex: \_\_\_\_\_

What offence(s) have you been charged with: \_\_\_\_\_

How many times have you been charged with a criminal offence? \_\_\_\_\_

**Rights and Citizenship**

1. Can you recall a time that you have heard of the United Nations Convention on the Rights of the Child (UNCRC)? Please explain
2. Can you explain in your own words what the *United Nations Convention on the Rights of the Child* (UNCRC) refers to?
3. Can you explain how you would define a 'right'?
4. Can anyone take away your rights?
5. Have you heard of the *Canadian Charter of Rights and Freedoms*? If so, can you explain what the purpose of the *Charter* is?
6. Can you provide me some examples of rights outlined in the *Charter*?

***Case Study***

7) 16 year old Tommy was charged with break and enter and possession of stolen goods. When Tommy was arrested, he asked the police what he was charged with, but the police did not answer him. At the police station, Tommy wanted to make a phone call, however the police told him that he could use the phone after he answered some questions. Although Tommy answered some questions, he did not answer them all. When Tommy finally met with his lawyer, he was told that he should plea guilty so that he would receive a lighter sentence, and so that he could 'speed up the process.' When Tommy asked his lawyer if he could further explain the consequences of pleading guilty, his lawyer simply said that it was the best thing for Tommy to do.

- A) Were any of Tommy's rights violated? If so, can you tell me which ones?
- B) Do you think that Tommy should have answered all of the questions that the police asked him?

C) Do you think that Tommy's lawyer should have explained the consequences of pleading guilty to Tommy? Why or why not?

D) Should young people always follow the advice of their lawyer, even if they disagree? Please explain?

### **Legal Rights**

7. Can you explain what offence(s) you have been accused of? How do you know this?

8. When you were arrested, which of your rights were you informed of?

9. Can you explain to me what each of these rights mean?

10. Are there any rights that you have not been properly provided with? Or any rights which you feel have been violated (or taken away from you)?

11. Can you think of an opportunity that you have been offered (if at all) to voice your own opinions or concerns

- With police officers?

- With your lawyer?

- With the judge?

12. When you were first questioned by the police was anyone else present? Please explain

13. Can you explain what the job of your lawyer is?

14. Can you explain how you think your lawyer should treat you?

15. Can you explain what it means to be presumed innocent until proven guilty?

16. Can you explain what type of information is in your Youth Justice Court record?

17. Can you explain what the consequences are of having a criminal record?

18. Do you believe that you have been convinced by a criminal justice official into doing anything that you did not want to do? If so, please explain